

COPYRIGHT ORDINANCE**版權條例****CONTENTS****目錄**

Section	Page	條次	頁次
PART I		第 I 部	
PRELIMINARY		導言	
1. Short title, commencement and interpretation	A3230	1. 簡稱、生效日期及釋義	A3231
PART II		第 II 部	
COPYRIGHT		版權	
DIVISION I		第 I 分部	
SUBSISTENCE, OWNERSHIP AND DURATION OF COPYRIGHT		版權的存在、擁有權及期限	
Introductory		引言	
2. Copyright and copyright works	A3232	2. 版權及版權作品	A3233
3. Rights subsisting in copyright works	A3232	3. 存在於版權作品的權利	A3233
Descriptions of work and related provisions		作品類別及有關條文	
4. Literary, dramatic and musical works	A3232	4. 文學作品、戲劇作品及音樂作品	A3233
5. Artistic works	A3234	5. 藝術作品	A3235
6. Sound recordings	A3234	6. 聲音紀錄	A3235
7. Films	A3236	7. 影片	A3237
8. Broadcasts	A3236	8. 廣播	A3237
9. Cable programmes	A3238	9. 有線傳播節目	A3239
10. Published editions	A3244	10. 已發表版本	A3245
Authorship and ownership of copyright		作者及版權的擁有權	
11. Authorship of work	A3244	11. 作品的作者	A3245
12. Works of joint authorship	A3246	12. 合作作品	A3247
13. First ownership of copyright	A3246	13. 版權的第一擁有權	A3247
14. Employee works	A3248	14. 僱員的作品	A3249
15. Commissioned works	A3248	15. 委託作品	A3249
16. Government copyright, etc	A3248	16. 政府版權等	A3249
Duration of copyright		版權的期限	
17. Duration of copyright in literary, dramatic, musical or artistic works	A3250	17. 文學作品、戲劇作品、音樂作品或藝術作品的版權期限	A3251
18. Duration of copyright in sound recordings	A3252	18. 聲音紀錄的版權期限	A3253

Section	Page	條次	頁次
19.	A3252	19.	A3253
20.	A3254	20.	A3255
21.	A3256	21.	A3257
DIVISION II		第 II 分部	
RIGHTS OF COPYRIGHT OWNER		版權擁有人的權利	
The acts restricted by copyright		受版權所限制的作為	
22.	A3256	22.	A3257
23.	A3258	23.	A3259
24.	A3258	24.	A3259
25.	A3260	25.	A3261
26.	A3260	26.	A3261
27.	A3262	27.	A3263
28.	A3262	28.	A3263
29.	A3262	29.	A3263
Secondary infringement of copyright		間接侵犯版權	
30.	A3264	30.	A3265
31.	A3264	31.	A3265
32.	A3266	32.	A3267
33.	A3266	33.	A3267
34.	A3268	34.	A3269
Infringing copy		侵犯版權複製品	
35.	A3268	35.	A3269
Defences		免責辯護	
36.	A3272	36.	A3273
DIVISION III		第 III 分部	
ACTS PERMITTED IN RELATION TO COPYRIGHT WORKS		就版權作品而允許的作為	
Introductory		引言	
37.	A3276	37.	A3277
General		一般條文	
38.	A3276	38.	A3277
39.	A3278	39.	A3279
40.	A3278	40.	A3279

Section	Page	條次	頁次
Education		教育	
41. Things done for purposes of instruction or examination	A3280	41. 為教學或考試的目的而作出的事情	A3281
42. Anthologies for educational use	A3280	42. 供教育用途的選集	A3281
43. Performing, playing or showing work in course of activities of educational establishments	A3282	43. 在教育機構的活動過程中表演、播放或放映作品	A3283
44. Recording by educational establishments of broadcasts and cable programmes	A3284	44. 由教育機構製作廣播及有線傳播節目的紀錄	A3285
45. Reprographic copying made by educational establishments of passages from published works	A3284	45. 教育機構將已發表作品中的片段藉翻印複製	A3285
Libraries and archives		圖書館及檔案室	
46. Libraries and archives: introductory	A3286	46. 圖書館及檔案室：引言	A3287
47. Copying by librarians: articles in periodicals	A3286	47. 由圖書館館長製作複製品：期刊內的文章	A3287
48. Copying by librarians: parts of published works	A3288	48. 由圖書館館長製作複製品：已發表作品的部分	A3289
49. Restriction on production of multiple copies of the same material	A3288	49. 對製造多份相同材料的複製品的限制	A3289
50. Copying by librarians: supply of copies to other libraries	A3290	50. 由圖書館館長製作複製品：供應複製品予其他圖書館	A3291
51. Copying by librarians or archivists: replacement copies of works	A3290	51. 由圖書館館長或檔案室負責人製作複製品：作品的替代複製品	A3291
52. Copying by librarians or archivists: certain unpublished works	A3292	52. 由圖書館館長或檔案室負責人製作複製品：某些未發表的作品	A3293
53. Copying by librarians or archivists: articles of cultural or historical importance	A3292	53. 由圖書館館長或檔案室負責人製作複製品：在文化或歷史方面有重要性的物品	A3293
Public administration		公共行政	
54. Legislative Council and judicial proceedings	A3294	54. 立法局程序及司法程序	A3295
55. Statutory inquiries	A3294	55. 法定研訊	A3295
56. Material open to public inspection or on official register	A3294	56. 開放予公眾查閱或在公事登記冊內的材料	A3295
57. Material communicated to the Government in the course of public business	A3296	57. 在公務過程中傳達給政府的材料	A3297
58. Public records	A3298	58. 公共紀錄	A3299
59. Acts done under statutory authority	A3298	59. 根據法定權限所作出的作為	A3299
Computer programs: Lawful users		電腦程式：合法使用者	
60. Lawful user may make back-up copy of computer program	A3300	60. 合法使用者可製作電腦程式的後備複製品	A3301
61. Lawful user may copy or adapt computer program	A3300	61. 合法使用者可複製或改編程式	A3301
Typefaces		字體	
62. Use of typeface in ordinary course of printing	A3300	62. 在一般印刷過程中使用字體	A3301
63. Articles for producing material in particular typeface	A3302	63. 產生以某種字體展現的材料的物品	A3303
Works in electronic form		電子形式作品	
64. Transfers of copies of works in electronic form	A3302	64. 電子形式作品的複製品的轉移	A3303

A3210	Ord. No. 92 of 1997	COPYRIGHT	版權條例	1997 年第 92 號條例	A3211
Section		Page	條次		頁次
65.	Certain acts permitted where works made available to the public	A3304	65.	因向公眾提供作品而允許作出的某些作為	A3305
	Miscellaneous: Literary, dramatic, musical and artistic works			雜項：文學作品、戲劇作品、音樂作品及藝術作品	
66.	Anonymous or pseudonymous works: acts permitted on assumptions as to expiry of copyright or death of author	A3304	66.	不具名或以假名署名的作品：基於關於版權期限屆滿或作者死亡的假設而允許作出的作為	A3305
67.	Use of notes or recordings of spoken words in certain cases	A3306	67.	在某些情況下使用講出的文字的筆記或紀錄	A3307
68.	Public reading or recitation	A3306	68.	公開誦讀或背誦	A3307
69.	Abstracts of scientific or technical articles	A3308	69.	科學或技術文章的撮錄	A3309
70.	Recordings of folksongs	A3308	70.	民歌的紀錄	A3309
71.	Representation of certain artistic works on public display	A3310	71.	某些公開展示的藝術作品的表述	A3311
72.	Advertisement of sale of artistic work	A3310	72.	售賣藝術作品的宣傳	A3311
73.	Making of subsequent works by same artist	A3312	73.	同一藝術家製作其後的作品	A3313
74.	Reconstruction of buildings	A3312	74.	重建建築物	A3313
	Miscellaneous: Films and sound recordings			雜項：影片及聲音紀錄	
75.	Films: acts permitted on assumptions as to expiry of copyright, etc.	A3312	75.	影片：基於關於版權期限屆滿等的假設而允許作出的作為	A3313
76.	Performance, showing or playing of works for purposes of club, society, etc.	A3314	76.	表演、放映或展示或播放作品	A3315
	Miscellaneous: Broadcasts and cable programmes			雜項：廣播及有線傳播節目	
77.	Incidental recording for purposes of broadcast or cable programme	A3314	77.	為廣播或有線傳播節目而附帶製作紀錄	A3315
78.	Recording for purposes of supervision and control of broadcasts and cable programmes	A3316	78.	為監管和控制廣播及有線傳播節目而製作紀錄	A3317
79.	Recording for purposes of time-shifting	A3316	79.	為遷就時間而製作紀錄	A3317
80.	Photographs of television broadcasts or cable programmes	A3316	80.	電視廣播或有線傳播節目的照片	A3317
81.	Free public showing or playing of broadcast or cable programme	A3318	81.	免費公開放映或播放廣播或有線傳播節目	A3319
82.	Reception and re-transmission of broadcast in cable programme service	A3320	82.	接收和再傳送有線傳播節目服務的廣播	A3321
83.	Provision of sub-titled copies of broadcast or cable programme	A3322	83.	提供附有字幕的廣播或有線傳播節目的複製品	A3323
84.	Recording for archival purposes	A3322	84.	為存檔而製作的紀錄	A3323
	Adaptations			改編本	
85.	Adaptations	A3324	85.	改編本	A3325
	Designs			外觀設計	
86.	Corresponding design	A3324	86.	相應外觀設計	A3325
87.	Effect of exploitation of design derived from artistic work	A3324	87.	利用從藝術作品衍生的外觀設計的効力	A3325
88.	Things done in reliance on registration of design	A3326	88.	依據外觀設計的註冊而作出的事情	A3327

Section	Page	條次	頁次
DIVISION IV			
MORAL RIGHTS			
Right to be identified as author or director		被識別為作者或導演的權利	
89.	Right to be identified as author or director	89.	被識別為作者或導演的權利
90.	Requirement that right be asserted	90.	被識別的權利必須體現
91.	Exceptions to right	91.	權利的例外情況
Right to object to derogatory treatment of work		反對作品受貶損處理的權利	
92.	Right to object to derogatory treatment of work	92.	反對作品受貶損處理的權利
93.	Exceptions to right	93.	權利的例外情況
94.	Qualification of right in certain cases	94.	在某些情況下權利受約制
95.	Infringement of right by possessing or dealing with infringing article	95.	管有侵犯權利物品或進行侵犯權利物品的交易而侵犯權利
False attribution of work		作品的虛假署名	
96.	False attribution of work	96.	作品的虛假署名
Supplementary		補充條文	
97.	Duration of rights	97.	權利的期限
98.	Consent and waiver of rights	98.	同意及放棄權利
99.	Application of provisions to joint works	99.	對合作作品適用的條文
100.	Application of provisions to parts of works	100.	對作品的部分適用的條文
DIVISION V		第 V 分部	
DEALINGS WITH RIGHTS IN COPYRIGHT WORKS		進行版權作品的權利的交易	
Copyright		版權	
101.	Assignment and licences	101.	轉讓及特許
102.	Prospective ownership of copyright	102.	版權的準擁有人
103.	Exclusive licences	103.	專用特許
104.	Copyright to pass under will with unpublished work	104.	版權藉遺囑而與未發表作品一併轉移
Moral right		精神權利	
105.	Moral rights not assignable	105.	精神權利不可轉讓
106.	Transmission of moral rights on death	106.	在死亡時轉傳精神權利

Section	Page	條次	頁次
DIVISION VI		第 VI 分部	
REMEDIES FOR INFRINGEMENT		侵犯權利的補救	
Rights and remedies of copyright owner		版權擁有人的權利和補救	
107.	Infringement actionable by copyright owner A3352	107.	版權擁有人可就侵犯版權提起訴訟 A3353
108.	Provisions as to damages in infringement action A3354	108.	關於侵犯版權訴訟中的損害賠償的規定 A3355
109.	Order for delivery up A3354	109.	交付令 A3355
110.	Period after which remedy of delivery up not available A3356	110.	期限過後不得以交付作為補救 A3357
111.	Order as to disposal of infringing copy or other article A3356	111.	處置侵犯版權複製品或其他物品的命令 A3357
Rights and remedies of exclusive licensee		專用特許持有人的權利和補救	
112.	Rights and remedies of exclusive licensee A3358	112.	專用特許持有人的權利和補救 A3359
113.	Exercise of concurrent rights A3358	113.	行使同時具有的權利 A3359
Remedies for infringement of moral rights		侵犯精神權利的補救	
114.	Remedies for infringement of moral rights A3360	114.	侵犯精神權利的補救 A3361
Presumptions		推定	
115.	Presumptions relevant to literary, dramatic, musical and artistic works A3362	115.	與文學作品、戲劇作品、音樂作品及藝術作品有關的推定 A3363
116.	Presumptions relevant to sound recordings, films and computer programs ... A3364	116.	與聲音紀錄人、影片及電腦程式有關的推定 A3365
117.	Presumptions relevant to works subject to Government copyright A3366	117.	與有政府版權的作品有關的推定 A3367
Offences		罪行	
118.	Criminal liability for making or dealing with infringing articles, etc. A3366	118.	製作侵犯版權物品等或進行侵犯版權物品等交易的刑事責任 A3367
119.	Penalties for offences under section 118 A3370	119.	第 118 條所訂罪行的罰則 A3371
120.	Making infringing copies outside Hong Kong, etc. A3370	120.	在香港以外地方等製作侵犯版權複製品 A3371
Supplementary		補充條文	
121.	Affidavit evidence A3372	121.	誓章證據 A3373
122.	Powers of investigating officers A3378	122.	調查人員的權力 A3379
123.	Restrictions on the entry and search of premises A3380	123.	進入和搜查處所的限制 A3381
124.	Obstruction of investigating officers A3380	124.	妨礙調查人員 A3381
125.	Liability of persons other than principal offender A3382	125.	主犯以外的人的法律責任 A3383
126.	Disclosure of information, etc. A3382	126.	披露資料等 A3383
127.	Protection of informers in criminal proceedings A3384	127.	對在刑事法律程序中的告發人的保障 A3385
128.	Inspection of articles, release of samples, etc. A3384	128.	檢查物品、發還樣本等 A3385
129.	Multilateral co-operation A3386	129.	多邊合作 A3387
130.	Offences relating to disclosure of information A3388	130.	關乎披露資料的罪行 A3389

Section	Page	條次	頁次
131. Seized articles, etc. liable to forfeiture	A3388	131. 可沒收被檢取的物品等	A3389
132. Disposal of articles, etc. where a person is charged	A3392	132. 在有人被控的情況下物品等的處置	A3393
133. Determination of application for forfeiture	A3392	133. 對沒收申請的裁定	A3393
134. Jurisdiction of District Court	A3398	134. 地方法院的司法管轄權	A3399
DIVISION VII		第 VII 分部	
PROCEEDINGS RELATING TO IMPORTATION OF INFRINGING ARTICLES		關乎輸入侵犯版權物品的法律程序	
135. Definitions	A3398	135. 定義	A3399
136. Application for detention order	A3398	136. 扣留令的申請	A3399
137. Issuance of detention order	A3400	137. 扣留令的發出	A3401
138. Enforcement of detention order	A3402	138. 扣留令的強制執行	A3403
139. Variation or setting aside of detention order	A3406	139. 扣留令的更改或推翻	A3407
140. Disclosure of information	A3406	140. 資料的披露	A3407
141. Inspection of articles, release of samples, etc.	A3408	141. 檢查物品、發還樣本等	A3409
142. Costs payable	A3410	142. 須繳付的費用	A3411
143. Compensation payable to importer, etc.	A3410	143. 須付予輸入者等的補償	A3411
144. Rules	A3410	144. 規則	A3411
DIVISION VIII		第 VIII 分部	
COPYRIGHT LICENSING		版權特許	
145. Licensing schemes and licensing bodies	A3412	145. 特許計劃及特許機構	A3413
Registration of licensing bodies		特許機構的註冊	
146. Registrar of Copyright Licensing Bodies	A3414	146. 版權特許機構註冊處處長	A3415
147. Maintenance of register and inspection	A3414	147. 註冊紀錄冊的備存及查閱	A3415
148. Application for registration and renewal	A3414	148. 申請註冊和續期	A3415
149. Registration, issue of certificate of registration	A3414	149. 註冊、註冊證明書的發出	A3415
150. Change of royalty charges during currency of certificate	A3416	150. 在證明書的有效期內更改使用費	A3417
151. Duration of registration, renewal and cancellation	A3416	151. 註冊的期限、續期及撤銷	A3417
152. Regulations	A3418	152. 規例	A3419
153. No liability in the case of the bona fide exercise of functions under this Division	A3418	153. 如真誠地行使本分部所指職能則無須負上法律責任	A3419
References and applications with respect to licensing schemes		關於特許計劃的轉介及申請	
154. Licensing schemes to which sections 155 to 160 apply	A3418	154. 第 155 至 160 條適用的特許計劃	A3419
155. Reference of proposed licensing scheme to Tribunal	A3420	155. 將建議的特許計劃轉介審裁處	A3421
156. Reference of licensing scheme to Tribunal	A3420	156. 將特許計劃轉介審裁處	A3421

A3218	Ord. No. 92 of 1997	COPYRIGHT	版權條例	1997 年第 92 號條例	A3219
Section		Page	條次		頁次
157.	Further reference of scheme to Tribunal	A3422	157.	將計劃再次轉介審裁處	A3423
158.	Application for grant of licence in connection with licensing scheme	A3424	158.	申請批出與特許計劃有關的特許	A3425
159.	Application for review of order as to entitlement to licence	A3424	159.	就與有權獲得特許有關的命令而申請覆核	A3425
160.	Effect of order of Tribunal as to licensing scheme	A3426	160.	審裁處就特許計劃作出的命令的效力	A3427
References and applications with respect to licensing by licensing bodies			就特許機構批出的特許而作出的轉介及申請		
161.	Licences to which sections 162 to 166 apply	A3428	161.	第 162 至 166 條適用的特許	A3429
162.	Reference to Tribunal of proposed licence	A3430	162.	將建議的特許轉介審裁處	A3431
163.	Reference to Tribunal of expiring licence	A3430	163.	將即將失效的特許轉介審裁處	A3431
164.	Tribunal may award interim payment and restrict application for interlocutory injunction	A3430	164.	版權審裁處可判給中期付款和限制非正審強制令的申請	A3431
165.	Application for review of order as to licence	A3432	165.	申請覆核就特許而作出的命令	A3433
166.	Effect of order of Tribunal as to licence	A3432	166.	審裁處就特許作出的命令的效力	A3433
Factors to be taken into account in certain classes of case			在某些種類的個案中須考慮的因素		
167.	General considerations: unreasonable discrimination	A3434	167.	一般考慮：不合理的歧視	A3435
Implied indemnity in schemes or licences			計劃或特許中的隱含彌償		
168.	Implied indemnity in certain schemes and licences	A3436	168.	某些計劃或特許中的隱含彌償	A3437
DIVISION IX			第 IX 分部		
THE COPYRIGHT TRIBUNAL			版權審裁處		
The Tribunal			審裁處		
169.	The Copyright Tribunal	A3438	169.	版權審裁處	A3439
170.	Membership of Tribunal	A3440	170.	審裁處的成員	A3441
171.	Financial provisions	A3440	171.	財政條文	A3441
172.	Constitution for purposes of proceedings	A3440	172.	為法律程序的目的之組成	A3441
Jurisdiction and procedure			司法管轄權和程序		
173.	Jurisdiction of Tribunal	A3442	173.	審裁處的司法管轄權	A3443
174.	General power to make rules	A3442	174.	訂立規則的一般權力	A3443
175.	Costs, proof of orders, etc.	A3444	175.	訟費、命令的證明等	A3445
Appeals			上訴		
176.	Appeal to court on point of law	A3444	176.	就法律論點向法院提出上訴	A3445

Section	Page	條次	頁次
DIVISION X			
QUALIFICATION FOR COPYRIGHT PROTECTION			
177.	A3446	177.	A3447
178.	A3446	178.	A3447
179.	A3448	179.	A3449
180.	A3448	180.	A3449
181.	A3450	181.	A3451
DIVISION XI			
MISCELLANEOUS AND GENERAL			
Government and Legislative Council copyright			
182.	A3450	182.	A3451
183.	A3452	183.	A3453
184.	A3452	184.	A3453
185.	A3454	185.	A3455
186.	A3456	186.	A3457
Other miscellaneous provisions			
187.	A3456	187.	A3457
188.	A3458	188.	A3459
189.	A3460	189.	A3461
190.	A3460	190.	A3461
Transitional provisions and savings			
191.	A3462	191.	A3463
192.	A3462	192.	A3463
Interpretation			
193.	A3464	193.	A3465
194.	A3464	194.	A3465
195.	A3464	195.	A3465
196.	A3466	196.	A3467
197.	A3468	197.	A3469
198.	A3468	198.	A3469
199.	A3472	199.	A3473

第 X 分部

享有版權保護所須具備的資格

177.	享有版權保護所須具備的資格	A3447
178.	藉作者而獲得的資格	A3447
179.	在香港註冊的船舶、航空器及氣墊船	A3449
180.	對於某些不給予香港作品足夠保護的國家的人民等不給予版權保護	A3449
181.	首次發表及關鍵時間的涵義	A3451

第 XI 分部

雜項及一般條文

政府版權及立法局版權

182.	政府版權	A3451
183.	條例的版權	A3453
184.	立法局版權	A3453
185.	條例草案的版權	A3455
186.	立法局：關於版權的補充條文	A3457

其他雜項條文

187.	以提起與平行進口有關的法律程序作無理威脅	A3457
188.	歸屬某些國際組織的版權	A3459
189.	民間傳說等：不具名的未發表作品	A3461
190.	總監及獲授權人員的保障	A3461

過渡性條文及保留條文

191.	過渡性條文及保留條文	A3463
192.	在其他成文法則或普通法下的權利和特權	A3463

釋義

193.	與解釋有關的一般規定	A3465
194.	對版權擁有人的提述的解釋	A3465
195.	“教育機構”和相關詞句的涵義	A3465
196.	“發表”和“商業發表”的涵義	A3467
197.	簽署的規定：對法人團體的適用範圍	A3469
198.	次要定義	A3469
199.	界定詞句的索引	A3473

Section	Page	條次	頁次
PART III		第 III 部	
RIGHTS IN PERFORMANCES		在表演中的權利	
DIVISION I		第 I 分部	
THE RIGHTS, INFRINGEMENT OF THE RIGHTS AND REMEDIES FOR INFRINGEMENT		權利、侵犯權利及侵犯權利的補救	
Introductory		引言	
200.	Rights conferred on performers and persons having fixation rights	200.	賦予表演者和具有錄製權的人的權利
Performers' rights		表演者的權利	
201.	Qualifying performances	201.	合資格表演
202.	Consent required for fixation, etc. of unfixed performance	202.	進行非錄製表演的錄製等須獲得同意
203.	Consent required for copying of fixation	203.	複製錄製品須獲得同意
204.	Consent required for issue of copies to public	204.	向公眾發放複製品須獲得同意
205.	Consent required for making available of copies to public	205.	向公眾提供複製品須獲得同意
206.	Infringement of performer's rights by use of fixation made without consent	206.	藉使用在未獲同意下製作的錄製品而侵犯表演者的權利
207.	Infringement of performer's rights by importing, exporting, possessing or dealing with infringing fixation	207.	藉輸入、輸出或管有侵犯權利的錄製品或進行侵犯權利的錄製品交易而侵 犯表演者的權利
Rights of person having fixation rights		具有錄製權的人的權利	
208.	Exclusive fixation contracts and persons having fixation rights	208.	獨有錄製合約和具有錄製權的人
209.	Consent required for fixation of performance subject to exclusive contract ...	209.	製作受獨有合約規限的表演的錄製品須獲得同意
210.	Infringement of fixation rights by use of fixation made without consent	210.	藉使用在未獲同意下製作的錄製品而侵犯錄製權
211.	Infringement of fixation rights by importing, exporting, possessing or dealing with infringing fixation	211.	藉輸入、輸出或管有侵犯權利的錄製品或進行侵犯權利的錄製品交易而侵 犯錄製權
Exceptions to rights conferred		賦予權利的例外情況	
212.	Acts permitted notwithstanding rights conferred by this Division	212.	在儘管有本分部賦予的權利的情况下仍允許的作為
213.	Power of Tribunal to give consent on behalf of owner of right of reproduction in certain cases	213.	審裁處在某些情況下代複製權的擁有人給予同意的權力
Duration of rights		權利的期限	
214.	Duration of rights	214.	權利的期限
Performers' economic rights		表演者的經濟權利	
215.	Performers' economic rights	215.	表演者的經濟權利
216.	Assignment and licences	216.	轉讓及特許
217.	Prospective ownership of a performer's economic rights	217.	表演者的經濟權利的準擁有人
218.	Exclusive licences	218.	專用特許

Section	Page	條次	頁次
219.	A3498	219.	A3499
220.	A3498	220.	A3499
221.	A3498	221.	A3499
222.	A3500	222.	A3501
223.	A3500	223.	A3501
Non-economic rights			
224.	A3502	224.	A3503
225.	A3504	225.	A3505
226.	A3504	226.	A3505
Remedies for infringement			
227.	A3504	227.	A3505
Delivery up of infringing fixation			
228.	A3506	228.	A3507
229.	A3506	229.	A3507
Supplementary provisions with respect to delivery up			
230.	A3508	230.	A3509
231.	A3510	231.	A3511
232.	A3512	232.	A3513
Jurisdiction of Copyright Tribunal			
233.	A3512	233.	A3513
234.	A3512	234.	A3513
235.	A3514	235.	A3515
236.	A3514	236.	A3515
237.	A3516	237.	A3517
Interpretation			
238.	A3516	238.	A3517
239.	A3518	239.	A3519

表演者的經濟權利根據遺囑而與未發表的原本錄製品一併轉移 A3499
 權利的擁有人可就侵犯權利提起訴訟 A3499
 關於侵犯權利訴訟中的損害賠償的規定 A3499
 專用特許持有人的權利和補救 A3501
 行使同時具有的權利 A3501

表演者的非經濟權利

非經濟權利 A3503
 具有錄製權的人的權利的可轉傳性 A3505
 同意 A3505

侵犯權利的補救

可就侵犯權利提起訴訟 A3505

交付侵犯權利的錄製品

交付令 A3507
 “侵犯權利的錄製品”的涵義 A3507

有關交付的補充條文

期限過後不得以交付作為補救 A3509
 處置侵犯權利的錄製品的命令 A3511
 地方法院的司法管轄權 A3513

版權審裁處的司法管轄權

版權審裁處的司法管轄權 A3513
 合資格的人 A3513
 在香港註冊的船舶、航空器及氣墊船 A3515
 對於某些不給予香港表演者足夠保護的國家等的人民不給予保護 A3515
 過渡性條文及保留條文 A3517

釋義

與版權條文中的詞句具有相同涵義的詞句 A3517
 界定詞句的索引 A3519

Section	Page	條次	頁次
DIVISION II		第 II 分部	
RIGHTS IN PERFORMANCES: PERMITTED ACTS		在表演中的權利：允許的作為	
240.	Introductory	240.	引言
241.	Criticism, reviews and news reporting	241.	批評、評論及新聞報導
242.	Incidental inclusion of performance or fixation	242.	附帶地包括表演或錄製品
243.	Things done for purposes of instruction or examination	243.	為教學或考試的目的而作出的事情
244.	Playing or showing sound recording, film, broadcast or cable programme at educational establishment	244.	在教育機構播放或放映聲音紀錄、影片、廣播或有線傳播節目
245.	Recording of broadcasts and cable programmes by educational establishments	245.	由教學機構製作的廣播及有線傳播節目的紀錄
246.	Copying by librarians or archivists: articles of cultural or historical importance	246.	由圖書館館長或檔案室負責人製作複製品：在文化或歷史方面有重要性的物品
247.	Legislative Council and judicial proceedings	247.	立法局程序及司法程序
248.	Statutory inquiries	248.	法定研訊
249.	Public records	249.	公共紀錄
250.	Acts done under statutory authority	250.	根據法定權限所作出的作為
251.	Transfer of fixations of performances in electronic form	251.	表演的電子形式錄製品的轉移
252.	Certain copying permitted when performances made available to the public	252.	在向公眾提供表演時允許進行的某些複製
253.	Use of fixations of spoken words in certain cases	253.	在某些情況下使用講出的文字的錄製品
254.	Fixations of folksongs	254.	民歌的錄製品
255.	Performance, showing or playing of works for purposes of club, society, etc.	255.	為會社、社團等目的而表演、放映或展示或播放作品
256.	Incidental fixation for purposes of broadcast or cable programme	256.	為廣播或有線傳播節目而附帶地製作錄製品
257.	Recordings for purposes of supervision and control of broadcasts and cable programmes	257.	為監管和控制廣播及有線傳播節目而製作紀錄
258.	Free public showing or playing of broadcast or cable programme	258.	免費公開放映或播放廣播或有線傳播節目
259.	Reception and re-transmission of broadcast in cable programme service	259.	接收和再傳送有線傳播節目服務的廣播
260.	Provision of sub-titled copies of broadcast or cable programme	260.	提供附有字幕的廣播或有線傳播節目的複製品
261.	Recording of broadcast or cable programme for archival purposes	261.	為存檔而製作廣播或有線傳播節目的紀錄
DIVISION III		第 III 分部	
PROCEEDINGS RELATING TO IMPORTATION OF INFRINGING FIXATIONS		關乎輸入侵犯權利的錄製品的法律程序	
262.	Definitions	262.	定義
263.	Application for detention order	263.	扣留令的申請
264.	Issuance of detention order	264.	扣留令的發出
265.	Enforcement of detention order	265.	扣留令的強制執行
266.	Variation or setting aside of detention order	266.	扣留令的更改或推翻
267.	Disclosure of information	267.	資料的披露
268.	Inspection of articles, release of samples, etc.	268.	檢查物品、發還樣本等

Section	Page	條次	頁次
269. Costs payable	A3552	269. 須繳付的費用	A3553
270. Compensation payable to importer, etc.	A3554	270. 須付予輸入者等的補償	A3555
271. Rules	A3554	271. 規則	A3555
272. Protection of Commissioner and authorized officers	A3554	272. 總監及獲授權人員的保障	A3555
PART IV		第 IV 部	
TECHNOLOGICAL MEASURES AND GENERAL		科技措施及一般條文	
Devices designed to circumvent copy-protection		為規避防止複製的保護措施而設計的器件	
273. Devices designed to circumvent copy-protection	A3556	273. 為規避防止複製的保護措施而設計的器件	A3557
Rights management information		權利管理資料	
274. Rights and remedies in request of unlawful acts to interfere with rights management information	A3558	274. 就干擾權利管理資料的不合法作為而具有的權利及補救	A3559
Fraudulent reception of transmissions		以欺詐手段接收傳送	
275. Rights and remedies in respect of apparatus, etc. for unauthorized reception of transmissions	A3560	275. 就用作在未經授權下接收傳送的器具等而具有的權利和補救	A3561
276. Denial of rights under section 275 to people of countries, etc. not giving adequate protection to Hong Kong broadcasts, cable programmes and encrypted transmissions	A3560	276. 對於某些不給予香港的廣播、有線傳播節目及經編碼處理的傳送足夠保護的國家等的人民不給予第 275 條所指的權利	A3561
277. Supplementary provisions as to fraudulent reception	A3562	277. 關於以欺詐手段接收的補充條文	A3563
General		一般條文	
278. Commissioner may authorize officers	A3562	278. 總監可授權予任何人員	A3563
279. Interpretation	A3564	279. 釋義	A3565
280. Consequential amendments	A3564	280. 相應修訂	A3565
281. Repeals	A3564	281. 廢除	A3565
Schedule 1 Educational establishments	A3564	附表 1 教育機構	A3565
Schedule 2 Copyright: Transitional provisions and savings	A3566	附表 2 版權：過渡性及保留條文	A3567
Schedule 3 Rights in performance: Transitional provisions and savings	A3586	附表 3 在表演中的權利：過渡性條文及保留條文	A3587
Schedule 4 Consequential amendments	A3590	附表 4 相應修訂	A3591
Schedule 5 Repeals	A3592	附表 5 廢除	A3593

HONG KONG

ORDINANCE NO. 92 OF 1997

L.S.

I assent.

Christopher PATTEN,
Governor.
26 June 1997

An Ordinance to restate the law of copyright, with amendments; to make provision as to the rights of performers and others in performances; to make provision with respect to devices designed to circumvent copy-protection of works, with respect to rights management information and with respect to the fraudulent reception of transmissions; and for connected purposes.

[27 June 1997]

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

PART I

PRELIMINARY

1. Short title, commencement and interpretation

- (1) This Ordinance may be cited as the Copyright Ordinance.
- (2) The following provisions shall come into operation on a day to be appointed by the Secretary for Trade and Industry by notice in the Gazette—
 - (a) the definitions of “register”, “Registrar” and “registration” in section 141(4);
 - (b) sections 142 to 149;
 - (c) paragraph 5 of Schedule 4.
- (3) The tables showing the provisions defining expressions used in Part II and Part III are set out in sections 199 and 239 respectively.

香 港

1997年第92號條例

公印位置

本人批准。

彭定康，
總督
1997年6月26日

本條例旨在重訂版權法律，並作出若干修訂；就表演者及在表演中的其他人士的權利，訂定條文；就為規避防止作品被複製的保護措施而設計的器件、權利管理資料和以欺詐手段接收傳送，訂定條文；以及就與上述事宜有關的目的，訂定條文。

[1997年6月27日]

由香港總督參照立法局意見並得該局同意而制定。

第 I 部

導言

1. 簡稱、生效日期及釋義

- (1) 本條例可引稱為《版權條例》。
- (2) 以下條文自工商司以憲報公告指定的日期起實施——
 - (a) 在第 141(4) 條中“處長”、“註冊”及“註冊紀錄冊”的定義；
 - (b) 第 142 至 149 條；
 - (c) 附表 4 第 5 段。
- (3) 顯示界定第 II 部及第 III 部使用的詞句的條文的表分別在第 199 及 239 條列明。

PART II

COPYRIGHT

DIVISION I

SUBSISTENCE, OWNERSHIP AND DURATION OF COPYRIGHT

Introductory

2. Copyright and copyright works

(1) Copyright is a property right which subsists in accordance with this Part in the following descriptions of work—

- (a) original literary, dramatic, musical or artistic works;
- (b) sound recordings, films, broadcasts or cable programmes; and
- (c) the typographical arrangement of published editions.

(2) In this Part “copyright work” (版權作品) means a work of any of those descriptions in which copyright subsists.

(3) Copyright does not subsist in a work unless the requirements of this Part with respect to qualification for copyright protection are met (see section 177 and the provisions referred to there).

[*cf.* 1988 c. 48 s. 1 U.K.]

3. Rights subsisting in copyright works

(1) The owner of the copyright in a work of any description has the exclusive right to do the acts specified in Division II as the acts restricted by the copyright in a work of that description.

(2) In relation to certain descriptions of copyright work the following rights conferred by Division IV (moral rights) subsist in favour of the author or director of the work, whether or not he is the owner of the copyright—

- (a) section 89 (right to be identified as author or director); and
- (b) section 92 (right to object to derogatory treatment of work).

[*cf.* 1988 c. 48 s. 2 U.K.]

Descriptions of work and related provisions

4. Literary, dramatic and musical works

(1) In this Part—
“dramatic work” (戲劇作品) includes a work of dance or mime;

第 II 部

版權

第 I 分部

版權的存在、擁有權及期限

引言

2. 版權及版權作品

(1) 版權是按照本部而存在於下列類別的作品的產權——

- (a) 原創的文學作品、戲劇作品、音樂作品或藝術作品；
- (b) 聲音紀錄、影片、廣播或有線傳播節目；及
- (c) 已發表版本的排印編排。

(2) 在本部中，“版權作品”(copyright work) 指有版權存在的該等類別作品中的任何作品。

(3) 除非本部中關於享有版權保護所須具備的資格的規定均已獲符合(參閱第 177 條及該條所提述的條文)，否則版權並不存在於任何作品。

[*比照* 1988 c. 48 s. 1 U.K.]

3. 存在於版權作品的權利

(1) 某類別作品的版權的擁有人具有作出第 II 分部中指明的作為的獨有權利，亦即該類別作品的版權所限制的作為。

(2) 就某些類別的版權作品而言，第 IV 分部(精神權利)所賦予的下列權利惠及作品的作者或導演(無論他是否版權擁有人)而存在——

- (a) 第 89 條(作者或導演的被識別權利)；及
- (b) 第 92 條(反對作品受貶損處理的權利)。

[*比照* 1988 c. 48 s. 2 U.K.]

作品類別及有關條文

4. 文學作品、戲劇作品及音樂作品

(1) 在本部中——

“文學作品”(literary work) 指除戲劇作品或音樂作品外的任何寫出、講出或唱出的作品，並據此包括——

“literary work” (文學作品) means 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 limiting to a table;
- (b) a computer program; and
- (c) preparatory design material for a computer program;

“musical work” (音樂作品) means a work consisting of music, exclusive of any words or action intended to be sung, spoken or performed with the music.

(2) Copyright does not subsist in a literary, dramatic or musical work unless and until it is recorded, in writing or otherwise; and references in this Part to the time at which such a work is made are to the time at which it is so recorded.

(3) It is immaterial for the purposes of subsection (2) whether the work is recorded by or with the permission of the author; and where it is not recorded by the author, nothing in that subsection affects the question whether copyright subsists in the record as distinct from the work recorded.

[*cf.* 1988 c. 48 s. 3 U.K.]

5. Artistic works

In this Part—

“artistic work” (藝術作品) means—

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

“building” (建築物) includes any fixed structure, and a part of a building or fixed structure;

“graphic work” (平面美術作品) includes—

- (a) any painting, drawing, diagram, map, chart or plan; and
- (b) any engraving, etching, lithograph, woodcut or similar work;

“photograph” (照片) 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” (雕塑品) includes a cast or model made for purposes of sculpture.

[*cf.* 1988 c. 48 s. 4 U.K.]

6. Sound recordings

(1) In this Part “sound recording” (聲音紀錄) means—

(a) 資料或其他材料的任何形式的編彙，且因其內容的選取或編排而構成智力創作，並包括(但不限於)列表；

(b) 電腦程式；及

(c) 為電腦程式而備的預備設計材料；

“音樂作品” (musical work) 指由音樂構成的作品，但不包括擬伴隨該等音樂而唱出或講出的文字或表演的動作；

“戲劇作品” (dramatic work) 包括舞蹈作品或默劇作品。

(2) 除非文學作品、戲劇作品或音樂作品以書面或其他方式記錄，否則版權不存在於該等作品，而在該等作品經如此記錄之前，其版權亦不存在；在本部中，凡提述該等作品的製作時間，即提述該等作品經如此記錄的時間。

(3) 就第(2)款而言，作品是否由作者記錄或是否經作者的允許而記錄並不具關鍵性；如作品並非由作者記錄，則第(2)款對版權是否在獨立於經記錄的作品的情況下存在於記錄本身此一問題，並無影響。

[*比照* 1988 c. 48 s. 3 U.K.]

5. 藝術作品

在本部中——

“平面美術作品” (graphic work) 包括——

- (a) 任何鬆掃畫、繪畫、圖形、地圖、圖表或圖則；及
- (b) 任何雕刻、蝕刻、版畫、木刻或相類的作品；

“建築物” (building) 包括固定的構築物以及建築物或固定構築物的部分；

“照片” (photograph) 指藉著把光或其他放射物記錄在任何媒體上而在該媒體上產生影像或藉任何方法從該媒體產生影像的紀錄，但該紀錄不構成影片的一部分；

“雕塑品” (sculpture) 包括為製作雕塑品而製作的鑄模或模型；

“藝術作品” (artistic work) 指——

- (a) 平面美術作品、照片、雕塑品或拼圖(不論其藝術質量)；
- (b) 屬建築物或建築物模型的建築作品；或
- (c) 美術工藝作品。

[*比照* 1988 c. 48 s. 4 U.K.]

6. 聲音紀錄

(1) 在本部中，“聲音紀錄” (sound recording) 指——

- (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.

(2) Copyright does not subsist in a sound recording which is, or to the extent that it is, a copy taken from a previous sound recording.

[*cf.* 1988 c. 48 s. 5A U.K.]

7. Films

(1) In this Part “film” (影片) means a recording on any medium from which a moving image may by any means be produced.

(2) The sound-track accompanying a film is to be treated as part of the film for the purposes of this Part.

(3) Without prejudice to the generality of subsection (2), where that subsection applies—

- (a) references in this Part to showing a film include playing the film sound-track to accompany the film; and
- (b) references to playing a sound recording do not include playing the film sound-track to accompany the film.

(4) Copyright does not subsist in a film which is, or to the extent that it is, a copy taken from a previous film.

[*cf.* 1988 c. 48 s. 5B U.K.]

8. Broadcasts

(1) In this Part a “broadcast” (廣播) 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.

(2) An encrypted transmission is regarded as capable of being lawfully received by members of the public in Hong Kong or elsewhere only if decoding equipment has been made available to members of the public in Hong Kong or elsewhere by or with the authority of the person making the transmission or the person providing the contents of the transmission.

(a) 聲音的紀錄，而該聲音可從該紀錄重播；或

(b) 記錄一項文學作品、戲劇作品或音樂作品的整項或任何部分的紀錄，而重現該作品或部分的聲音可從該紀錄產生，

不論該紀錄是記錄在甚麼媒體上，亦不論該聲音以甚麼方法重播或產生。

(2) 如某一聲音紀錄是以前的聲音紀錄的複製品，則版權並不存在於該某一聲音紀錄；如某一聲音紀錄在某程度上是以前的聲音紀錄的複製品，則版權在該程度上並不存在於該某一聲音紀錄。

[*比照* 1988 c. 48 s. 5A U.K.]

7. 影片

(1) 在本部中，“影片”(film)指記錄在任何媒體上的紀錄，而活動影像可藉任何方法自該紀錄產生。

(2) 就本部而言，一部影片所附同的聲帶須視作該影片的一部分。

(3) 在不損害第(2)款的一般性的原則下，凡該款適用，則——

- (a) 在本部中，凡提述放映一部影片，包括播放該影片所附同的影片聲帶；及
- (b) 提述播放聲音紀錄，並不包括播放影片所附同的影片聲帶。

(4) 如某一影片是以前的影片的複製品，則版權並不存在於該某一影片；如某一影片在某程度上是以前的影片的複製品，則版權在該程度上並不存在於該某一影片。

[*比照* 1988 c. 48 s. 5B U.K.]

8. 廣播

(1) 在本部中，“廣播”(broadcast)指藉無線電訊傳送——

- (a) 能夠被在香港或其他地方的公眾人士合法地接收的聲音或影像及聲音或表述聲音或影像及聲音的東西；或
- (b) 為向在香港或其他地方的公眾人士播送而傳送的聲音或影像及聲音或表述聲音或影像及聲音的東西，

但傳送方法並非透過向公眾提供作品的複製品或表演的錄製品的服務。

(2) 經編碼處理的傳送只有在傳送人或提供該傳送內容的人將或授權將解碼器提供予在香港或其他地方的公眾人士的情況下，才可視為能夠被在香港或其他地方的公眾人士合法地接收。

(3) References in this Part to the person making a broadcast, broadcasting a work, or including a work in a broadcast are—

- (a) to the person transmitting the programme, if he has responsibility to any extent for its contents; and
- (b) to any person providing the programme who makes with the person transmitting it the arrangements necessary for its transmission,

and references in this Part to a programme, in the context of broadcasting, are to any item included in a broadcast.

(4) For the purposes of this Part the place from which a broadcast is made is the place where, under the control and responsibility of the person making the broadcast, the programme-carrying signals are introduced into an uninterrupted chain of communication (including, in the case of a satellite transmission, the chain leading to the satellite and down towards the earth).

(5) References in this Part to the reception of a broadcast include reception of a broadcast relayed by means of a telecommunication system.

(6) Copyright does not subsist in a broadcast which infringes, or to the extent that it infringes, the copyright in another broadcast or in a cable programme.

[*cf. 1988 c. 48 s. 6 U.K.*]

9. Cable programmes

(1) In this Part—

“cable programme” (有線傳播節目) means any item included in a cable programme service;

“cable programme service” (有線傳播節目服務) means a service which consists wholly or mainly in the lawful sending by any person, by means of a telecommunication 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 2 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,

and includes such a service that has as a component a multipoint microwave distribution system, but does not include the services excepted under subsection (2);

“interconnection” (互相連接) includes interconnection that involves a change of technical characteristics, format or parameters;

(3) 在本部中，凡提述作出廣播的人、廣播某作品的人或將某作品包括在廣播內的人，即提述——

- (a) 傳送有關節目的人(如該人對廣播內容負有任何程度的責任)；及
- (b) 任何提供有關節目的人，而該人與傳送該節目的人作出該節目的傳送所需的安排，

而在本部中，在廣播方面提述節目，即提述廣播所包括的任何項目。

(4) 將凡載有節目的信號在作出廣播的人的控制與責任下，於某地點進入一項無間斷的連鎖傳訊程序(以衛星傳送而言，包括將廣播信號傳送往衛星然後送返地球的連鎖程序)，則就本部而言，廣播即屬自該地點作出。

(5) 在本部中，凡提述接收廣播，即包括接收藉電訊系統轉播的廣播。

(6) 如某項廣播侵犯另一廣播或有線傳播節目的版權，則版權並不存在於該某項廣播或，如某項廣播在某程度上侵犯另一廣播或有線傳播節目的版權，則版權在該程度上並不存在於該某項廣播。

[*比照 1988 c. 48 s. 6 U.K.*]

9. 有線傳播節目

(1) 在本部中——

“互相連接”(interconnection) 包括涉及更改技術特質、形式或系數的互相連接；

“有線傳播節目”(cable programme) 指包括在有線傳播節目服務內的項目；

“有線傳播節目服務”(cable programme service) 指全部或主要由任何人為下述目的而藉電訊系統(不論是否由該人或任何其他營運)合法地發送聲音、影像、其他資料或該等項目的任何組合所構成的服務——

- (a) 供在香港或其他地方的 2 個或多於 2 個地點藉無線電訊以外的方法合法地接收(不論該等聲音、影像、其他資料或該等項目的組合是否以供同時接收或應該服務的不同使用者的要求而供在不同時間接收)；或
- (b) 供在香港或其他地方的某地點為於該地點向公眾人士或任何群體播送該等聲音、影像、資料或該等項目的組合而合法地接收(不論以任何方法接收)；

並包括有多點式微波傳輸系統作為組成部分的服務，但不包括根據第(2)款列為例外項目的服務；

“影像”(visual images) 就第(2)(a)款中的例外項目而言，指可被看成活動圖像的一連串影像；

“sounds” (聲音), for the purposes of the exclusion in subsection (2)(a), means speech or music or both except that they do not include, in relation to any telecommunication system, speech providing information for the purpose of facilitating the use of a telecommunication service provided by means of that system;

“visual images” (影像), for the purposes of the exclusion in subsection (2)(a), means visual images which are such that sequences of them may be seen as moving pictures.

(2) The following are excepted from the definition of “cable programme service”—

- (a) a service (such as the services commonly known as video conferencing and video telephony) which consists wholly or mainly in the transmission of sounds or visual images or both by any person if it is an essential feature of the service that, while they are being transmitted, there will or may be transmitted from each place of reception, by means of the telecommunication system or (as the case may be) the part of it by means of which they are transmitted, sounds or visual images or both for reception by that person;
- (b) a service for making available to the public of copies of works or fixations of performances, but excluding a service in which the transmission of moving visual representational images is an essential feature (such as the service commonly known as video-on-demand);
- (c) the running by a broadcaster of a telecommunication system in the case of which every transmission made by it is either—
 - (i) a transmission, by wireless telegraphy, from a transmitting station for general reception of sounds, visual images or signals serving for the impartation (whether as between persons and persons, things and things or persons and things) of any matter otherwise than in the form of sounds or visual images; or
 - (ii) a transmission within a single set of premises of sounds, visual images or such signals which are to be or have been so transmitted;
- (d) the running of a telecommunication system in the case of which the only agency involved in the transmission of things thereby transmitted is light and the things thereby transmitted are so transmitted as to be capable of being received or perceived by the eye and without more;
- (e) the running by a person of a telecommunication system which is not connected to another telecommunication system and in the case of which all the apparatus comprised therein is situated either—

“聲音” (sounds) 就第 (2)(a) 款中的例外項目而言，指語音或音樂或語音及音樂，但就任何電訊系統而言，則不包括為利便使用藉該系統提供的電訊服務而提供資料的語音。

(2) 以下為“有線傳播節目服務”的定義的例外項目——

- (a) 全部或主要由任何人傳送聲音或影像或聲音及影像所構成的服務 (例如一般稱為視像會議及視像電話的服務)，但該服務的一項基本特點須為在傳送聲音或影像或聲音及影像之時，在每個接收的地點將會或可能藉賴以傳送該等聲音或影像或聲音及影像的電訊系統或其部分 (視屬何情況而定)，將聲音或影像或聲音及影像傳送供該人接收；
- (b) 向公眾提供作品的複製品或表演的錄製品的服務，但不包括以傳送活動影像的表述為一項基本特點的服務 (例如一般稱為自選影像服務的服務)；
- (c) 由作出廣播的人營運的某一電訊系統，而該系統作出的每項傳送均屬以下傳送——
 - (i) 自傳送站藉無線電訊傳送聲音、影像或用作傳達 (不論是在人與人之間、物與物之間或人與物之間) 任何並非聲音或影像形式的事物的信號供大眾接收；或
 - (ii) 在單一組處所內傳送將如此傳送或已如此傳送的聲音、影像或該等信號；
- (d) 營運以光為唯一涉及傳送某些事物的媒介的電訊系統，而藉光傳送的該等事物的傳送方式，是使該等事物無需其他東西而能夠用眼睛接收或看見的；
- (e) 由某人營運並非與另一電訊系統連接的某一電訊系統，而組成該某一系統的器具均位於——

- (i) on a single set of premises in single occupation (other than a service operated as part of the amenities provided for residents or inmates of premises run as a business); or
 - (ii) in a vehicle, vessel, aircraft or hovercraft or in 2 or more vehicles, vessels, aircraft or hovercraft mechanically coupled together;
- (f) the running by a single individual of a telecommunication system which is not connected to another telecommunication system and in the case of which—
- (i) all the apparatus comprised therein is under his control; and
 - (ii) everything transmitted by it that is speech, music and other sounds, visual images, signals serving for the impartation (whether as between persons and persons, things and things or persons and things) of any matter otherwise than in the form of sounds or visual images, or signals serving for the actuation or control of machinery or apparatus is transmitted solely for his domestic purposes,
- and references in paragraph (e) and this paragraph to another telecommunication system do not include references to such a system as is mentioned in paragraph (c) (whether run by a broadcaster or by any other person); or
- (g) in the case of a business carried on by a person, the running, for the purposes of the business, of a telecommunication system which is not connected to another telecommunication system and with respect to which the following conditions are satisfied—
- (i) that no person except the person carrying on the business is concerned in the control of the apparatus comprised in the system;
 - (ii) that nothing that is speech, music and other sounds, visual images, signals serving for the impartation (whether as between persons and persons, things and things or persons and things) of any matter otherwise than in the form of sounds or visual images, or signals serving for the actuation or control of machinery or apparatus is transmitted by the system by way of rendering a service to another;
 - (iii) that, in so far as sounds or visual images are transmitted by the system, they are not transmitted for the purpose of their being heard or seen by persons other than the person carrying on the business or any employees of his engaged in the conduct thereof;
 - (iv) that, in so far as signals serving for the impartation (whether as between persons and persons, things and things or persons and things) of any matter otherwise than in the

- (i) 單一佔用的單一組處所(但作為提供予以商業方式營運的處所的居民或住客的休憩設施的一部分而運作的服務則除外);或
 - (ii) 車輛、船隻、航空器或氣墊船或以機械方式連在一起的數量為 2 或以上的車輛、船隻、航空器或氣墊船;
- (f) 由個人單獨營運的並非與另一電訊系統連接的某一電訊系統，而——
- (i) 組成該某一電訊系統的所有器具均由該人所控制;及
 - (ii) 其所傳送的所有事物凡屬語音、音樂及其他聲音、影像、用作傳達(不論是在人與人之間、物與物之間或人與物之間)任何並非聲音或影像形式的事物的信號，或用作驅動或操控機械或器具的信號，均純粹為該人的家居用途而傳送，
- 而在 (e) 段及本段中提述另一電訊系統，並不包括提述 (c) 段提及的電訊系統(不論是否由作出廣播的人或任何其他人所營運);或
- (g) 就某人所經營的業務而言，為該業務而營運並非與另一電訊系統連接的某一電訊系統，而以下條件就該某一電訊系統而獲符合——
- (i) 除經營該業務的人外，並沒有其他人涉及控制組成該系統的器具;
 - (ii) 並沒有語音、音樂及其他聲音、影像、用作傳達(不論是在人與人之間、物與物之間或人與物之間)任何並非聲音或影像形式的事物的信號，或用作驅動或操控機械或器具的信號以為另一人提供服務的方式而藉該系統傳送;
 - (iii) 如該系統傳送的東西屬聲音或影像，該等聲音或影像並沒有為了供經營該業務的人或其從事該業務的運作的僱員以外的人聆聽或觀看而傳送;
 - (iv) 如該系統傳送的東西屬用作傳達(不論是在人與人之間、物與物之間或人與物之間)任何並非聲音或影像形式的事物的信號，該等信

form of sounds or visual images are transmitted by the system, they are not transmitted for the purpose of imparting matter otherwise than to the person carrying on the business, any employees of his engaged in the conduct thereof or things used in the course of the business and controlled by him; and

- (v) that, in so far as signals of speech, music and other sounds are transmitted by the system, they are not transmitted for the purpose of actuating or controlling machinery or apparatus used otherwise than in the course of the business.

(3) The Governor in Council may by order amend subsection (2) so as to remove exceptions, subject to such transitional provision as appears to him to be appropriate.

(4) References in this Part to the inclusion of a cable programme or work in a cable programme service are to its transmission as part of the service; and references to the person including it are to the person providing the service.

(5) Copyright does not subsist in a cable programme if—

- (a) it is included in a cable programme service by reception and immediate re-transmission of a broadcast; or
(b) it infringes, or to the extent that it infringes, the copyright in another cable programme or in a broadcast.

[*cf.* 1988 c. 48 s. 7 U.K. & 1956 c. 74 s. 14A U.K.]

10. Published editions

(1) In this Part “published edition” (已發表版本), in the context of copyright in the typographical arrangement of a published edition, means a published edition of the whole or any part of one or more literary, dramatic or musical works.

(2) Copyright does not subsist in the typographical arrangement of a published edition if, or to the extent that, it reproduces the typographical arrangement of a previous edition.

[*cf.* 1988 c. 48 s. 8 U.K.]

Authorship and ownership of copyright

11. Authorship of work

(1) In this Part “author” (作者), in relation to a work, means the person who creates it.

號並沒有為傳達事物予經營該業務的人、其從事該業務的運作的僱員或在業務過程中使用並且由經營該業務的人控制的東西以外的人或東西而傳送；及

- (v) 如該系統傳送的東西屬語音、音樂及其他聲音，該等語音、音樂及聲音並沒有為驅動或操控並非用於業務過程中的機械或器具而傳送。

(3) 總督會同行政局可在其覺得適當的過渡性條文的規限下，藉命令修訂第(2)款以刪除例外項目。

(4) 在本部中，凡提述將有線傳播節目或作品包括在有線傳播節目服務中，即提述將該等節目或作品作為該服務的一部分而傳送；而凡提述將有線傳播節目或作品包括在該服務中的人，即提述提供該服務的人。

(5) 如某一有線傳播節目——

- (a) 藉某廣播的接收和即時再傳送而包括在有線傳播節目服務內，版權並不存在於該某一有線傳播節目；或
(b) 侵犯另一有線傳播節目或某廣播的版權，版權並不存在於該某一有線傳播節目，如某一有線傳播節目在某程度上侵犯該等版權，版權在該程度上並不存在於該某一有線傳播節目。

[*比照* 1988 c. 48 s. 7 U.K. & 1956 c. 74 s. 14A U.K.]

10. 已發表版本

(1) 在本部中，“已發表版本”(published edition)就其排印編排的版權而言，指一項或多於一項文學作品、戲劇作品或音樂作品的整項或部分的已發表版本。

(2) 如已發表版本的排印編排重覆以前版本的排印編排，則版權並不存在於該已發表版本的排印編排；如已發表版本的排印編排在某程度上重覆以前版本的排印編排，則版權在該程度上並不存在於該已發表版本的排印編排。

[*比照* 1988 c. 48 s. 8 U.K.]

作者及版權的擁有權

11. 作品的作者

(1) 在本部中，“作者”(author)就作品而言，指創作該作品的人。

- (2) That person is taken to be—
- (a) in the case of a sound recording, the producer;
 - (b) in the case of a film, the producer and the principal director;
 - (c) in the case of a broadcast, the person making the broadcast (see section 8(3)) or, in the case of a broadcast which relays another broadcast by reception and immediate re-transmission, the person making that other broadcast;
 - (d) in the case of a cable programme, the person providing the cable programme service in which the programme is included;
 - (e) in the case of the typographical arrangement of a published edition, the publisher.

(3) In the case of a literary, dramatic, musical or artistic work which is computer-generated, the author is taken to be the person by whom the arrangements necessary for the creation of the work are undertaken.

(4) For the purposes of this Part a work is of “unknown authorship” if the identity of the author is unknown or, in the case of a work of joint authorship, if the identity of none of the authors is known.

(5) For the purposes of this Part the identity of an author is regarded as unknown if it is not possible for a person to ascertain his identity by reasonable inquiry; but if his identity is once known it shall not subsequently be regarded as unknown.

[*cf. 1988 c. 48 s. 9 U.K.*]

12. Works of joint authorship

(1) In this Part a “work of joint authorship” (合作作品) means a work made by the collaboration of 2 or more authors in which the contribution of each author is not distinct from that of the other author or authors.

(2) A film is treated as a work of joint authorship unless the producer and the principal director are the same person.

(3) A broadcast is treated as a work of joint authorship in a case where more than one person is to be taken as making the broadcast (section 8(3)).

(4) References in this Part to the author of a work are, except as otherwise provided, construed in relation to a work of joint authorship as references to all the authors of the work.

[*cf. 1988 c. 48 s. 10 U.K.*]

13. First ownership of copyright

The author of a work is the first owner of any copyright in it, subject to sections 14, 15 and 16.

[*cf. 1988 c. 48 s. 11(1) U.K.*]

- (2) 以下的人視為創作作品的人——
- (a) 就聲音紀錄而言，指製作人；
 - (b) 就影片而言，指製作人及主要導演；
 - (c) 就某一廣播而言，指作出廣播的人(參閱第 8(3) 條)；就藉接收和即時再傳送而轉播另一廣播的廣播而言，指作出該另一廣播的人；
 - (d) 就有線傳播節目而言，指提供包括該節目在內的有線傳播節目服務的人；
 - (e) 就已發表版本的排印編排而言，指發表人。

(3) 如文學作品、戲劇作品、音樂作品或藝術作品是電腦產生的，作出創作該作品所需的安排的人視為作者。

(4) 就本部而言，如作品的作者的身分不為人知，該作品屬“作者不為人知”的作品；如作品是合作作品而所有合作作者的身分均不為人知，該作品屬“作者不為人知”的作品。

(5) 就本部而言，如不能藉合理查究而確定作者的身分，則該作者的身分須視為不為人知；但如該作者的身分一旦為人所知，則該作者的身分此後即不得視為不為人知。

[*比照 1988 c. 48 s. 9 U.K.*]

12. 合作作品

(1) 在本部中，“合作作品”(work of joint authorship) 指 2 名或多於 2 名作者合作製作的作品，而各名作者的貢獻是不能明顯地與另一或其他作者的貢獻分開的。

(2) 除非任何影片的製作人和主要導演均屬同一人，否則該影片須視為合作作品。

(3) 如某廣播是視為由多於一人作出的，則該廣播須視為合作作品(第 8(3) 條)。

(4) 在本部中，凡提述作品的作者，則就合作作品而言，須解釋為提述該作品的全部作者，但另有規定的除外。

[*比照 1988 c. 48 s. 10 U.K.*]

13. 版權的第一擁有權

除第 14、15 及 16 條另有規定外，作品的作者是該作品的任何版權的第一擁有人。

[*比照 1988 c. 48 s. 11(1) U.K.*]

14. Employee works

(1) Where a literary, dramatic, musical or artistic work, or a film, is made by an employee in the course of his employment, his employer is the first owner of any copyright in the work subject to—

- (a) any agreement to the contrary; and
- (b) subsection (2).

(2) Subject to any agreement to the contrary, where such work is exploited by his employer or by someone else with the employer's permission in a way that could not reasonably have been contemplated by the employer and the employee at the time of making the work, the employer shall pay an award to the employee in respect of such exploitation at such amount as agreed between the employer and the employee or failing an agreement, as determined by the Copyright Tribunal.

[*cf. 1988 c. 48 s. 11(2) U.K.*]

15. Commissioned works

(1) Where a work is made on the commission of a person and there is an agreement between the author and the commissioner of the work which expressly provides for the entitlement to the copyright, copyright in the commissioned work belongs to the person who is entitled to the copyright under the agreement.

(2) Notwithstanding subsection (1) and sections 13 and 103, the person who commissioned the work—

- (a) has an exclusive licence to exploit the commissioned work for all purposes that could reasonably have been contemplated by the author and the person who commissioned the work at the time the work was commissioned; and
- (b) has the power to restrain any exploitation of the commissioned work for any purpose against which he could reasonably take objection.

16. Government copyright, etc.

Sections 13, 14 and 15 do not apply to Government copyright or Legislative Council copyright (see sections 182 and 184) or to copyright which subsists by virtue of section 188 (copyright of certain international organizations).

14. 僱員的作品

(1) 凡文學作品、戲劇作品、音樂作品或藝術作品或影片是由僱員在受僱工作期間製作的，則——

- (a) 除任何協議有相反的規定外；及
- (b) 在符合第(2)款的規定下，

該僱員的僱主是該作品的版權的第一擁有人。

(2) 除任何協議有相反的規定外，如有關僱主利用該等作品或在其允許下由他人利用該等作品，而利用的方式在該等作品創作當時是該僱主及有關僱員均不能合理地預料的，則僱主須就該項利用支付一筆償金予該僱員，款額由該僱主及該僱員議定，如沒有協議則由版權審裁處裁定。

[*比照 1988 c. 48 s. 11(2) U.K.*]

15. 委託作品

(1) 凡作品是某人委託製作的，而作者與委託人之間訂有就版權的享有權作出明確的規定的協議，則委託作品的版權屬於根據該協議享有版權的人。

(2) 儘管有第(1)款及第13及103條的規定，委託製作作品的人——

- (a) 具有專用特許，可為作者及該委託製作作品的人在委託製作作品時可合理地預料的目的，利用該委託作品；及
- (b) 有權制止為任何他可合理地提出反對的目的而利用委託作品。

16. 政府版權等

第13、14及15條不適用於政府版權或立法局版權(參閱第182及184條)，亦不適用於憑藉第188條而存在的版權(某些國際組織的版權)。

Duration of copyright**17. Duration of copyright in literary, dramatic, musical or artistic works**

(1) The following provisions have effect with respect to the duration of copyright in a literary, dramatic, musical or artistic work.

(2) Copyright expires at the end of the period of 50 years from the end of the calendar year in which the author dies, subject as follows.

(3) If the work is of unknown authorship, copyright expires—

- (a) at the end of the period of 50 years from the end of the calendar year in which the work was first made; or
- (b) if during that period the work is made available to the public, at the end of the period of 50 years from the end of the calendar year in which it is first so made available,

subject as follows.

(4) Subsection (2) applies if the identity of the author becomes known before the end of the period specified in subsection (3)(a) or (b).

(5) For the purposes of subsection (3) making available to the public includes—

- (a) in the case of a literary, dramatic or musical work—
 - (i) performance in public; or
 - (ii) being broadcast or included in a cable programme service;
- (b) in the case of an artistic work—
 - (i) exhibition in public;
 - (ii) a film including the work being shown in public; or
 - (iii) being included in a broadcast or cable programme service;
- (c) making available of copies of a work to the public within the meaning of section 26,

but in determining generally for the purposes of that subsection whether a work has been made available to the public no account is to be taken of any unauthorized act.

(6) If the work is computer-generated the above provisions do not apply and copyright expires at the end of the period of 50 years from the end of the calendar year in which the work was made.

(7) The provisions of this section are adapted as follows in relation to a work of joint authorship—

- (a) the reference in subsection (2) to the death of the author is to be construed—
 - (i) if the identity of all the authors is known, as a reference to the death of the last of them to die; and

版權的期限**17. 文學作品、戲劇作品、音樂作品或藝術作品的版權期限**

(1) 以下條文就文學作品、戲劇作品、音樂作品或藝術作品的版權期限而具有效力。

(2) 除以下條文另有規定外，如有關作者於某公曆年死亡，版權在自該年年終起計的 50 年期間完結時屆滿。

(3) 除以下條文另有規定外，如屬作者不為人知的作品，則——

- (a) 凡作品於某公曆年首次製作，其版權自該年年終起計的 50 年期間完結時屆滿；或
- (b) 如該作品在該期間內某公曆年首次向公眾提供，其版權在自該年年終起計的 50 年期間完結時屆滿。

(4) 如第 (3)(a) 或 (b) 款所指明的期間完結前，作者的身分變成為人所知，則第 (2) 款適用。

(5) 為施行第 (3) 款，“向公眾提供”(making available to the public)——

- (a) 就文學作品、戲劇作品或音樂作品而言，包括——
 - (i) 公開表演；或
 - (ii) 將作品廣播或將其包括在有線傳播節目服務內；
- (b) 就藝術作品而言，包括——
 - (i) 公開展覽；
 - (ii) 公開放映包括該作品的影片；或
 - (iii) 將該作品包括在廣播或有線傳播節目服務內；
- (c) 作品的複製品如第 26 條所指而向公眾提供，

但在為施行該款而就一般情況決定作品是否已向公眾提供時，不得考慮任何未經授權的作為。

(6) 如作品是由電腦產生而於某公曆年製作的，則上述條文並不適用，而版權在自該年年終起計的 50 年期間完結時屆滿。

(7) 就合作作品而言，本條條文須如以下般予以修改——

- (a) 在第 (2) 款中，凡提述作者死亡須按以下規定解釋——
 - (i) 如所有作者的身分均為人所知，該提述即提述他們當中最後死亡的人的死亡；及

- (ii) if the identity of one or more of the authors is known and the identity of one or more others is not, as a reference to the death of the last whose identity is known; and
- (b) the reference in subsection (4) to the identity of the author becoming known is to be construed as a reference to the identity of any of the authors becoming known.

(8) This section does not apply to Government copyright or Legislative Council copyright (see sections 182 to 184) or to copyright which subsists by virtue of section 188 (copyright of certain international organizations).

[*cf. 1988 c. 48 s. 12 U.K.*]

18. Duration of copyright in sound recordings

(1) The following provisions have effect with respect to the duration of copyright in a sound recording.

(2) Copyright expires—

- (a) at the end of the period of 50 years from the end of the calendar year in which it is made; or
- (b) if during that period it is released, 50 years from the end of the calendar year in which it is released,

subject as follows.

(3) For the purposes of subsection (2) a sound recording is “released” when it is first published, played in public, broadcast or included in a cable programme service; but in determining whether a sound recording has been released no account is to be taken of any unauthorized act.

[*cf. 1988 c. 48 s. 13A U.K.*]

19. Duration of copyright in films

(1) The following provisions have effect with respect to the duration of copyright in a film.

(2) Copyright expires at the end of the period of 50 years from the end of the calendar year in which the death occurs of the last to die of the following persons—

- (a) the principal director;
- (b) the author of the screenplay;
- (c) the author of the dialogue; or
- (d) the composer of music specially created for and used in the film,

subject as follows.

(3) If the identity of one or more of the persons referred to in subsection (2)(a) to (d) is known and the identity of one or more others is not, the reference in that subsection to the death of the last of them to die is to be construed as a reference to the death of the last whose identity is known.

(ii) 如其中一名或多於一名作者的身分為人所知，但其他的一名或多於一名作者的身分不為人知，該提述即指為人所知的作者中最後死亡的人的死亡；及

(b) 在第(4)款中，凡提述作者的身分變成為人所知，須解釋為提述任何一個作者的身分變成為人所知。

(8) 本條不適用於政府版權或立法局版權(參閱第182至184條)或憑藉第188條而存在的版權(某些國際組織的版權)。

[*比照 1988 c. 48 s. 12 U.K.*]

18. 聲音紀錄的版權期限

(1) 以下條文就聲音紀錄的版權期限而具有效力。

(2) 除以下條文另有規定外——

- (a) 凡聲音紀錄於某公曆年製作，該聲音紀錄的版權在自該年年終起計的50年期間完結時屆滿；或
- (b) 如聲音紀錄在該期間內於某公曆年發行，則該紀錄的版權在自該年年終起計的50年期間完結時屆滿。

(3) 為施行第(2)款，當聲音紀錄首次發表、公開播放、廣播或包括在有線傳播節目服務內時，即屬“發行”，但在決定任何聲音紀錄是否屬已發行時，不得考慮任何未經授權的作為。

[*比照 1988 c. 48 s. 13A U.K.*]

19. 影片的版權期限

(1) 以下條文就影片的版權期限而具有效力。

(2) 除以下條文另有規定外，如以下人士中最後死亡的人的死亡在某公曆年發生，版權在自該年年終起計的50年期間完結時屆滿——

- (a) 主要導演；
- (b) 劇本的作者；
- (c) 對白的作者；或
- (d) 特別為影片創作並用於影片中的音樂的創作人。

(3) 如一名或多於一名第(2)(a)至(d)款所提述的人士的身分為人所知，但其餘的一名或多於一名該等人士的身分不為人知，則在該款中提述該等人士中最後死亡的人的死亡，須解釋為提述身為人所知的人士中最後死亡的人的死亡。

(4) If the identity of the persons referred to in subsection (2)(a) to (d) is unknown, copyright expires at—

- (a) the end of the period of 50 years from the end of the calendar year in which the film was made; or
- (b) if during that period the film is made available to the public, at the end of the period of 50 years from the end of the calendar year in which it is first so made available.

(5) Subsections (2) and (3) apply if the identity of any of those persons becomes known before the end of the period specified in subsection (4)(a) or (b).

(6) For the purposes of subsection (4) making available to the public includes—

- (a) showing in public;
- (b) making available of copies of a work to the public within the meaning of section 26; or
- (c) being broadcast or included in a cable programme service,

but in determining generally for the purposes of that subsection whether a film has been made available to the public no account is to be taken of any unauthorized act.

(7) If in any case there is no person falling within subsection (2)(a) to (d) the above provisions do not apply and copyright expires at the end of the period of 50 years from the end of the calendar year in which the film was made.

(8) For the purposes of this section the identity of any of the persons referred to in subsection (2)(a) to (d) is to be regarded as unknown if it is not possible for a person to ascertain his identity by reasonable inquiry; but if the identity of any such person is once known it shall not subsequently be regarded as unknown.

[*cf.* 1988 c. 48 s. 13B U.K.]

20. Duration of copyright in broadcasts and cable programmes

(1) The following provisions have effect with respect to the duration of copyright in a broadcast or cable programme.

(2) Copyright in a broadcast or cable programme expires at the end of the period of 50 years from the end of the calendar year in which the broadcast was made or the programme was included in a cable programme service, subject as follows.

(3) Copyright in a repeat broadcast or cable programme expires at the same time as the copyright in the original broadcast or cable programme; and accordingly no copyright arises in respect of a repeat broadcast or cable programme which is broadcast or included in a cable programme service after the expiry of the copyright in the original broadcast or cable programme.

(4) 倘若第 (2)(a) 至 (d) 款所提述的人士的身分不為人知——

- (a) 如影片於某公曆年製作，該影片的版權自該年年終起計的 50 年期間完結時屆滿；或
- (b) 如影片在該期間於某公曆年首次向公眾提供，則該影片的版權在自該年年終起計的 50 年期間完結時屆滿。

(5) 如在第 (4)(a) 或 (b) 款所指明的期間完結前上述人士的身分變成為人所知，則第 (2) 及 (3) 款適用。

(6) 為施行第 (4) 款，“向公眾提供” (making available to the public) 包括——

- (a) 公開放映；
- (b) 作品的複製品如第 26 條所指而向公眾提供；或
- (c) 廣播或包括在有線傳播節目服務內，

但在為施行該款而就一般情況決定影片是否已向公眾提供時，不得考慮任何未經授權的作為。

(7) 如在任何個案中，無人屬第 (2)(a) 至 (d) 款所指的人士，則上述條文並不適用，而如影片於某公曆年製作，該影片的版權在自該年年終起計的 50 年期間完結時屆滿。

(8) 就本條而言，如不能藉合理查究而確定第 (2)(a) 至 (d) 款所提述的人士的身分，則該等人士的身分須視為不為人知；但如任何該等人士的身分一旦為人所知，則該人的身分此後即不得視為不為人知。

[*比照* 1988 c. 48 s. 13B U.K.]

20. 廣播及有線傳播節目的版權期限

(1) 以下條文就廣播或有線傳播節目的版權期限而具有效力。

(2) 除以下條文另有規定外，於某公曆年作出的廣播的版權，在自該年年終起計的 50 年期間完結時屆滿；於某公曆年包括在有線傳播節目服務內的有線傳播節目的版權，在自該年年終起計的 50 年期間完結時屆滿。

(3) 重播的廣播或有線傳播節目的版權與原本的廣播或有線傳播節目的版權同時屆滿，因此，在原本的廣播或有線傳播節目的版權屆滿後，廣播某重播的廣播或將重播的有線傳播節目包括在有線傳播節目服務內，版權不會就該重播的廣播或有線傳播節目而產生。

(4) A repeat broadcast or cable programme means one which is a repeat either of a broadcast previously made or of a cable programme previously included in a cable programme service.

[*cf.* 1988 c. 48 s. 14 U.K.]

21. Duration of copyright in typographical arrangement of published editions

Copyright in the typographical arrangement of a published edition expires at the end of the period of 25 years from the end of the calendar year in which the edition was first published.

[*cf.* 1988 c. 48 s. 15 U.K.]

DIVISION II

RIGHTS OF COPYRIGHT OWNER

The acts restricted by copyright

22. The acts restricted by copyright in a work

(1) The owner of the copyright in a work has, in accordance with the following provisions of this Division, the exclusive right to do the following acts in Hong Kong—

- (a) to copy the work (see section 23);
- (b) to issue copies of the work to the public (see section 24);
- (c) where the work is a computer program or sound recording, to rent copies of the work to the public (see section 25);
- (d) to make available copies of the work to the public (see section 26);
- (e) to perform, show or play the work in public (see section 27);
- (f) to broadcast the work or include it in a cable programme service (see section 28);
- (g) to make an adaptation of the work or do any of the above in relation to an adaptation (see section 29),

and those acts are referred to in this Part as the “acts restricted by the copyright”.

(2) Copyright in a work is infringed by a person who without the licence of the copyright owner does, or authorizes another to do, any of the acts restricted by the copyright.

(3) References in this Part to the doing of an act restricted by the copyright in a work are to the doing of it—

(4) 重播的廣播或有線傳播節目指重播以前作出的廣播或以前包括在有線傳播節目服務內的有線傳播節目。

[*比照* 1988 c. 48 s. 14 U.K.]

21. 已發表版本的排印編排的版權期限

於某公曆年首次發表的已發表版本的排印編排的版權，在自該年年終起計的 25 年期間完結時屆滿。

[*比照* 1988 c. 48 s. 15 U.K.]

第 II 分部

版權擁有人的權利

受版權所限制的作為

22. 作品的版權所限制的作為

(1) 作品的版權的擁有人按照本分部的以下條文，具有在香港作出以下作為的獨有權利——

- (a) 複製該作品 (參閱第 23 條)；
- (b) 向公眾發放該作品的複製品 (參閱第 24 條)；
- (c) 在該作品屬電腦程式或聲音紀錄的情況下，租賃該作品的複製品予公眾 (參閱第 25 條)；
- (d) 向公眾提供該作品的複製品 (參閱第 26 條)；
- (e) 公開表演、放映或播放該作品 (參閱第 27 條)；
- (f) 將該作品廣播或將該作品包括在有線傳播節目服務內 (參閱第 28 條)；
- (g) 製作該作品的改編本，或就該等改編本而作出任何上述作為 (參閱第 29 條)。

而上述作為在本部中稱為“受版權所限制的作為”。

(2) 任何人未獲作品的版權擁有人的特許，而自行或授權他人作出任何受版權所限制的作為，即屬侵犯該作品的版權。

(3) 在本部中，凡提述作出受作品版權所限制的作為，即提述——

(a) in relation to the work as a whole or any substantial part of it; and
 (b) either directly or indirectly,
 and it is immaterial whether any intervening acts themselves infringe copyright.

(4) This Division has effect subject to—

- (a) the provisions of Division III (acts permitted in relation to copyright works); and
 (b) the provisions of Division VIII (provisions with respect to copyright licensing).

[*cf.* 1988 c. 48 s. 16 U.K.]

23. Infringement of copyright by copying

(1) The copying of the work is an act restricted by the copyright in every description of copyright work; and references in this Part to copying and copies are construed as follows.

(2) Copying of a work means reproducing the work in any material form. This includes storing the work in any medium by electronic means.

(3) In relation to an artistic work copying includes the making of a copy in 3 dimensions of a 2-dimensional work and the making of a copy in 2 dimensions of a 3-dimensional work.

(4) Copying in relation to a film, television broadcast or cable programme includes making a photograph of the whole or any substantial part of any image forming part of the film, broadcast or cable programme.

(5) Copying in relation to the typographical arrangement of a published edition means making a facsimile copy of the arrangement.

(6) Copying in relation to any description of work includes the making of copies which are transient or are incidental to some other use of the work.

[*cf.* 1988 c. 48 s. 17 U.K.]

24. Infringement by issue of copies to the public

(1) The issue of copies of the work to the public is an act restricted by the copyright in every description of copyright work.

(2) References in this Part to the issue of copies of a work to the public are to the act of putting into circulation copies not previously put into circulation, in Hong Kong or elsewhere, by or with the consent of the copyright owner.

(3) References in this Part to the issue of copies of a work to the public do not include—

- (a) 就該作品的整項或其任何實質部分；及
 (b) 直接或間接地，
 作出該作為，而任何介入作為本身是否侵犯版權則不具關鍵性。
 (4) 本分部在下列條文的規限下有效——
 (a) 第 III 分部的條文(就版權作品而允許的作為)；及
 (b) 第 VIII 分部的條文(與版權的特許有關的條文)。

[*比照* 1988 c. 48 s. 16 U.K.]

23. 因複製而侵犯版權

(1) 複製有關作品是受任何類別的版權作品的版權所限制的作為；在本部中，凡提述複製及複製品，均按以下條文解釋。

(2) 複製任何作品指以任何實質形式複製該作品，並包括藉電子方法將作品貯存於任何媒體。

(3) 就藝術作品而言，複製包括將平面作品製成立體的複製品以及將立體作品製成平面的複製品。

(4) 就影片、電視廣播或有線傳播節目而言，複製包括製作構成該影片、廣播或有線傳播節目的全部或任何實質部分的任何影像的照片。

(5) 就已發表版本的排印編排而言，複製指製作該編排的精確複製品。

(6) 就任何類別的作品而言，複製包括製作該等作品的短暫存在的複製品或為該等作品的其他用途而附帶製作複製品。

[*比照* 1988 c. 48 s. 17 U.K.]

24. 以向公眾發放複製品方式侵犯版權

(1) 向公眾發放有關作品的複製品，是受任何類別的版權作品的版權所限制的作為。

(2) 在本部中，凡提述向公眾發放作品的複製品，即提述由版權擁有人或在其同意下將以前從未在香港或其他地方發行的複製品發行的作為。

(3) 在本部中，凡提述向公眾發放作品的複製品，並不包括——

- (a) any subsequent distribution, sale, hiring or loan of copies previously put into circulation (but see section 25: infringement by rental); or
- (b) any subsequent importation of those copies into Hong Kong.
- (4) References in this Part to the issue of copies of a work include the issue of the original and the issues of copies in electronic form.

[*cf. 1988 c. 48 s. 18 U.K.*]

25. Infringement by rental of work to the public

- (1) The rental of copies of the work to the public is an act restricted by the copyright in a computer program or a sound recording.
- (2) In this Part, subject to the following provisions of this section, “rental” (租賃) means making a copy of the work available for use, on terms that it will or may be returned, for direct or indirect economic or commercial advantage.
- (3) The expression “rental” (租賃) does not include—
- (a) making available for the purpose of public performance, playing or showing in public, broadcasting or inclusion in a cable programme service;
- (b) making available for the purpose of exhibition in public; or
- (c) making available for on-the-spot reference use.
- (4) References in this Part to the rental of copies of a work include the rental of the original.

[*cf. 1988 c. 48 s. 18A U.K.*]

26. Infringement by making available of copies to the public

- (1) The making available of copies of the work to the public is an act restricted by copyright in every description of copyright work.
- (2) References in this Part to the making available of copies of a work to the public are to the making available of copies of the work, by wire or wireless means, in such a way that members of the public in Hong Kong or elsewhere may access the work from a place and at a time individually chosen by them (such as the making available of copies of works through the service commonly known as the INTERNET).
- (3) References in this Part to the making available of copies of a work to the public include the making available of the original.
- (4) The mere provision of physical facilities for enabling the making available of copies of works to the public does not of itself constitute an act of making available of copies of works to the public.

- (a) 以前曾發行的複製品的任何其後的分發、售賣、租賃或借出(但參閱第25條：以租賃方式侵犯版權)；或
- (b) 該等複製品其後輸入香港。
- (4) 在本部中，凡提述發放作品的複製品，包括發放原本的作品及發放電子形式的複製品。

[*比照 1988 c. 48 s. 18 U.K.*]

25. 以租賃作品予公眾方式侵犯版權

- (1) 租賃有關作品的複製品予公眾是受電腦程式或聲音紀錄的版權所限制的作為。
- (2) 在本部中，除本條以下條文另有規定外，“租賃”(rental)指為直接或間接的經濟或商業利益，而令作品的複製品在該複製品將予或可予歸還的條款下供人使用。
- (3) “租賃”(rental)一詞不包括——
- (a) 提供作公開表演、播放或放映之用或作廣播或包括在有線傳播節目服務內之用；
- (b) 提供作公開展覽之用；或
- (c) 提供作即場參考之用。
- (4) 在本部中，凡提述租賃作品的複製品，包括租賃原本的作品。

[*比照 1988 c. 48 s. 18A U.K.*]

26. 以向公眾提供複製品方式侵犯版權

- (1) 向公眾提供有關作品的複製品是受任何類別的版權作品的版權所限制的作為。
- (2) 在本部中，凡提述向公眾提供作品的複製品，即提述藉有線或無線的方式提供，而如此提供的方法使公眾人士可從其各自選擇的地點及於其各自選擇的時間觀看或收聽該作品(例如透過一般稱為電腦互聯網服務的服務而提供作品的複製品)。
- (3) 在本部中，凡提述向公眾提供作品的複製品，包括提供原本的作品。
- (4) 僅提供使作品的複製品能夠向公眾提供的實物設施本身並不構成向公眾提供作品的複製品的作為。

27. Infringement by performance, playing or showing of work in public

(1) The performance of the work in public is an act restricted by the copyright in a literary, dramatic or musical work.

(2) In this Part “performance” (表演), in relation to a work—

(a) includes delivery in the case of lectures, addresses, speeches and sermons; and

(b) in general, includes any mode of visual or acoustic presentation, including presentation by means of a sound recording, film, broadcast or cable programme of the work.

(3) The playing or showing of the work in public is an act restricted by the copyright in a sound recording, film, broadcast or cable programme.

(4) Where copyright in a work is infringed by its being performed, played or shown in public by means of apparatus for receiving visual images or sounds transmitted by electronic means, the person by whom the visual images or sounds are sent, and in the case of a performance the performers, shall not be regarded as responsible for the infringement.

[*cf.* 1988 c. 48 s. 19 U.K.]

28. Infringement by broadcasting or inclusion in a cable programme service

The broadcasting of the work or its inclusion in a cable programme service is an act restricted by the copyright in—

(a) a literary, dramatic, musical or artistic work;

(b) a sound recording or film; or

(c) a broadcast or cable programme.

[*cf.* 1988 c. 48 s. 20 U.K.]

29. Infringement by making adaptation or act done in relation to adaptation

(1) The making of an adaptation of the work is an act restricted by the copyright in a literary, dramatic or musical work. For this purpose an adaptation is made when it is recorded, in writing or otherwise.

(2) The doing of any of the acts specified in sections 23 to 28, or subsection (1), in relation to an adaptation of the work is also an act restricted by the copyright in a literary, dramatic or musical work. For this purpose it is immaterial whether the adaptation has been recorded, in writing or otherwise, at the time the act is done.

(3) In this Part “adaptation” (改編本)—

27. 以公開表演、放映或播放作品方式侵犯版權

(1) 公開表演有關作品是受文學作品、戲劇作品或音樂作品的版權所限制的作為。

(2) 在本部中，就作品而言，“表演”(performance)——

(a) 包括講課、講話、演說及講道；及

(b) 一般而言，包括藉任何視像或有聲方式表達，並包括藉聲音紀錄、影片、廣播或有線傳播節目表達。

(3) 公開播放或放映有關作品，是受聲音紀錄、影片、廣播或有線傳播節目的版權所限制的作為。

(4) 如以器具接收藉電子方法傳送的影像或聲音而將作品公開表演、播放或放映，因而侵犯該作品的版權，則發送影像或聲音的人及(如屬表演)表演者，均不視為對侵犯版權負責。

[*比照* 1988 c. 48 s. 19 U.K.]

28. 以廣播作品或將作品包括在有線傳播節目服務內的方式侵犯版權

廣播有關作品或將其包括在有線傳播節目服務內，是受以下作品的版權所限制的作為——

(a) 文學作品、戲劇作品、音樂作品或藝術作品；

(b) 聲音紀錄或影片；或

(c) 廣播或有線傳播節目。

[*比照* 1988 c. 48 s. 20 U.K.]

29. 以改編或作出與改編有關的作為的方式侵犯版權

(1) 製作有關作品的改編本，是受文學作品、戲劇作品或音樂作品的版權所限制的作為。就此而言，當以書面或其他方式記錄該等作品，即為製作改編本。

(2) 就文學作品、戲劇作品或音樂作品的改編本而作出第 23 至 28 條或第 (1) 款所指明的作為中的任何作為，亦屬受該等作品的版權所限制的作為。就此而言，在作出該作為時該改編本是否已經以書面或其他方式記錄，並不具關鍵性。

(3) 在本部中“改編本”(adaptation)——

- (a) in relation to a literary work, other than a computer program, or dramatic work, means—
- (i) a translation of the work;
 - (ii) a version of a dramatic work in which it is converted into a non-dramatic work or, as the case may be, of a non-dramatic work in which it is converted into a dramatic work;
 - (iii) a version of the work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book, or in a newspaper, magazine or similar periodical;
- (b) in relation to a computer program, means an arrangement or altered version of the program or a translation of it;
- (c) in relation to a musical work, means an arrangement or transcription of the work.
- (4) In relation to a computer program a “translation” (翻譯本) includes a version of the program in which it is converted into or out of a computer language or code or into a different computer language or code.
- (5) No inference is to be drawn from this section as to what does or does not amount to copying a work.

[*cf. 1988 c. 48 s. 21 U.K.*]

Secondary infringement of copyright

30. Secondary infringement: importing or exporting infringing copy

The copyright in a work is infringed by a person who, without the licence of the copyright owner, imports into Hong Kong or exports from Hong Kong, otherwise than for his private and domestic use, a copy of the work which is, and which he knows or has reason to believe to be, an infringing copy of the work.

[*cf. 1988 c. 48 s. 22 U.K.*]

31. Secondary infringement: possessing or dealing with infringing copy

The copyright in a work is infringed by a person who, without the licence of the copyright owner—

- (a) possesses for the purpose of trade or business;
- (b) sells or lets for hire, or offers or exposes for sale or hire;

- (a) 就文學作品(電腦程式除外)或戲劇作品而言,指——
- (i) 該作品的翻譯本;
 - (ii) 由戲劇作品轉為非戲劇作品的戲劇作品的版本,或由非戲劇作品轉為戲劇作品的非戲劇作品的版本(視屬何情況而定);
 - (iii) 全部或主要藉圖畫表達故事或動作的該作品的任何版本,而該等圖畫是適宜在書本或在報章、雜誌或相類期刊上複製的;
- (b) 就電腦程式而言,指該程式的編排版本或經更改的版本,或其翻譯本;
- (c) 就音樂作品而言,指該作品的樂曲編排或改編譜。
- (4) 就電腦程式而言,“翻譯本”(translation)包括由電腦程式轉為電腦語言或代碼的電腦程式的版本或由電腦語言或代碼轉為電腦程式的電腦程式的版本,或由一種電腦語言或代碼轉為另一種電腦語言或代碼的電腦程式的版本。
- (5) 不得自本條而推論甚麼構成或並不構成複製某作品。

[*比照 1988 c. 48 s. 21 U.K.*]

間接侵犯版權

30. 間接侵犯版權：輸入或輸出侵犯版權複製品

任何人未獲作品的版權擁有人的特許,將該作品的複製品輸入或輸出香港,而他知道或有理由相信該複製是該作品的侵犯版權複製品,而且他輸入或輸出該複製品並非供自己私人和家居使用,即屬侵犯該作品的版權。

[*比照 1988 c. 48 s. 22 U.K.*]

31. 間接侵犯版權：管有侵犯版權複製品或進行侵犯版權複製品交易

任何人未獲作品的版權擁有人的特許,就該作品的複製品作出以下作為,而他知道或有理由相信該複製品是該作品的侵犯版權複製品,即屬侵犯該作品的版權——

- (a) 為交易或業務的目的而管有該複製品;
- (b) 將該複製品出售、出租、要約出售或要約出租,或為出售或出租而展示該複製品;

- (c) for the purpose of trade or business, exhibits in public or distributes; or
- (d) distributes otherwise than for the purpose of trade or business to such an extent as to affect prejudicially the owner of the copyright,

a copy of a work which is, and which he knows or has reason to believe to be, an infringing copy of the work.

[*cf.* 1988 c. 48 s. 23 U.K.]

32. Secondary infringement: providing means for making infringing copies

(1) Copyright in a work is infringed by a person who, without the licence of the copyright owner—

- (a) makes;
- (b) imports into Hong Kong or exports from Hong Kong;
- (c) possesses for the purpose of trade or business; or
- (d) sells or lets for hire, or offers or exposes for sale or hire,

an article specifically designed or adapted for making copies of that work, knowing or having reason to believe that it is to be used to make infringing copies.

(2) Copyright in a work is infringed by a person who, without the licence of the copyright owner, transmits the work by means of a telecommunications system (otherwise than by broadcasting or inclusion in a cable programme service), knowing or having reason to believe that infringing copies of the work will be made by means of the reception of the transmission in Hong Kong or elsewhere.

[*cf.* 1988 c. 48 s. 24 U.K.]

33. Secondary infringement: permitting use of premises for infringing performance

(1) Where the copyright in a work is infringed by a performance at a place of public entertainment, any person who gave permission for that place to be used for the performance is also liable for the infringement unless when he gave permission he believed on reasonable grounds that the performance would not infringe copyright.

(2) In this section “place of public entertainment” (公眾娛樂場所) includes premises which are occupied mainly for other purposes but are from time to time made available for hire for the purposes of public entertainment.

[*cf.* 1988 c. 48 s. 25 U.K.]

- (c) 為交易或業務的目的而公開展覽該複製品或分發該複製品；或
- (d) 並非為交易或業務的目的而分發該複製品並達到損害版權擁有人的程度。

[*比照* 1988 c. 48 s. 23 U.K.]

32. 間接侵犯版權：提供製造侵犯版權複製品的方法

(1) 任何人未獲作品的版權擁有人的特許而——

- (a) 製作物品；
- (b) 將物品輸入或輸出香港；
- (c) 為交易或業務的目的而管有物品；或
- (d) 將物品出售、出租、要約出售或要約出租，或為出售或出租而展示該物品，

而該物品是經特定設計或改裝，用以製作該作品的複製品，而該人是在知道或有理由相信該物品是將用以製作該等侵犯版權複製品的情況下作出上述作為，則該人即屬侵犯該作品的版權。

(2) 任何人未獲作品的版權擁有人的特許，藉電訊系統傳送該作品（但並非藉廣播或藉包括在有線傳播節目服務內而傳送），而他是在知道或有理由相信將有作品的侵犯版權複製品藉在香港或其他地方接收該傳送而製作的情況下作出該傳送，則該人即屬侵犯該作品的版權。

[*比照* 1988 c. 48 s. 24 U.K.]

33. 間接侵犯版權：允許處所用作進行侵犯版權表演

(1) 凡在公眾娛樂場所作出的表演侵犯作品的版權，除非任何允許該場所用作該表演的人在他給予允許時有合理理由相信該表演不會侵犯版權，否則該人亦須對該項侵犯版權負上法律責任。

(2) 在本條中，“公眾娛樂場所” (place of public entertainment) 包括主要佔用作其他用途但不時亦供租用作公眾娛樂用途的處所。

[*比照* 1988 c. 48 s. 25 U.K.]

34. Secondary infringement: provision of apparatus for infringing performance, etc.

(1) Where copyright in a work is infringed by a public performance of the work, or by the playing or showing of the work in public, by means of apparatus for—

- (a) playing sound recordings;
- (b) showing films; or
- (c) receiving visual images or sounds transmitted by electronic means,

the persons specified in subsections (2) to (4) are also liable for the infringement.

(2) A person who supplied the apparatus, or any substantial part of it, is liable for the infringement if when he supplied the apparatus or part—

- (a) he knew or had reason to believe that the apparatus was likely to be so used as to infringe copyright; or
- (b) in the case of apparatus whose normal use involves a public performance, playing or showing, he did not believe on reasonable grounds that it would not be so used as to infringe copyright.

(3) An occupier of premises who gave permission for the apparatus to be brought onto the premises is liable for the infringement if when he gave permission he knew or had reason to believe that the apparatus was likely to be so used as to infringe copyright.

(4) A person who supplied a copy of a sound recording or film used to infringe copyright is liable for the infringement if when he supplied it he knew or had reason to believe that what he supplied, or a copy made directly or indirectly from it, was likely to be so used as to infringe copyright.

[*cf. 1988 c. 48 s. 26 U.K.*]

Infringing copy

35. Meaning of “infringing copy”

(1) In this Part “infringing copy” (侵犯版權複製品), in relation to a copyright work, is to be construed in accordance with this section.

(2) A copy of a work is an infringing copy if its making constituted an infringement of the copyright in the work in question.

(3) A copy of a work other than a copy of an accessory work is also an infringing copy if—

- (a) it has been or is proposed to be imported into Hong Kong; and

34. 間接侵犯版權：提供器具作侵犯版權表演等

(1) 凡藉使用以下器具公開表演作品或公開播放或放映作品而侵犯該作品的版權，則第(2)至(4)款所指明的人亦須對該項侵犯版權負上法律責任——

- (a) 播放聲音紀錄的器具；
- (b) 放映影片的器具；或
- (c) 接收藉電子方法傳送的影像或聲音的器具。

(2) 供應器具或其任何實質部分的人如在供應該器具或該部分時——

- (a) 知道或有理由相信該器具相當可能被人以侵犯版權的方式使用；或
- (b) (如該器具的正常用途涉及公開表演、播放或放映) 基於合理理由不相信該器具不會被人以侵犯版權的方式使用，

則該供應人須對該項侵犯版權負上法律責任。

(3) 允許該器具被帶進處所的該處所的佔用人如在給予允許時，知道或有理由相信該器具相當可能被人以侵犯版權的方式使用，該佔用人亦須對該項侵犯版權負上法律責任。

(4) 供應用作侵犯版權的聲音紀錄或影片的人如在供應該聲音紀錄或影片時，知道或有理由相信他所供應的聲音紀錄或影片或以他所供應的聲音紀錄或影片直接或間接製作的複製品相當可能被人以侵犯版權的方式使用，則該人亦須對該項侵犯版權負上法律責任。

[*比照 1988 c. 48 s. 26 U.K.*]

侵犯版權複製品

35. “侵犯版權複製品”的涵義

(1) 在本部中，“侵犯版權複製品”(infringing copy) 就版權作品而言，須按照本條解釋。

(2) 如某作品的複製品的製作構成侵犯有關作品的版權，則該複製品即屬侵犯版權複製品。

(3) 如——

- (a) 某作品的複製品(附屬作品的複製品除外)已輸入或擬輸入香港；及

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

(4) For the purposes of sections 118 to 133 (criminal provisions) “infringing copy” (侵犯版權複製品) does not include a copy of a work—

(a) that was lawfully made in the country, territory or area where it was made;

(b) that has been or is proposed to be imported into Hong Kong at any time after the expiration of 18 months beginning on the first day of publication of the work in Hong Kong or elsewhere; and

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

or a copy of an accessory work—

(i) that was lawfully made in the country, territory or area where it was made;

(ii) that has been or is proposed to be imported into Hong Kong; and

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

(5) For the purposes of Division VII (proceedings relating to importation of infringing articles), “infringing copy” (侵犯版權複製品) does not include a copy of a work or a copy of an accessory work—

(a) that was lawfully made in the country, territory or area where it was made;

(b) that has been or is proposed to be imported into Hong Kong; and

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

(6) Where in any proceedings the question arises whether a copy of a work is an infringing copy and it is shown—

(a) that it is a copy of the work; and

(b) that copyright subsists in the work or has subsisted at any time, it shall be presumed until the contrary is proved that the copy was made at a time when copyright subsisted in the work.

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

section 41(5) (copies made for purposes of instruction or examination);

section 44(3) (recordings made by educational establishments for educational purposes);

(b) 該複製品(附屬作品的複製品除外)假使是在香港製作即會構成侵犯有關作品的版權,或違反關乎該作品的專用特許協議,

該複製品(附屬作品的複製品除外)亦屬侵犯版權複製品(附屬作品的複製品除外)。

(4) 就第 118 至 133 條(刑事條文)而言,“侵犯版權複製品”(infringing copy)並不包括符合以下說明的某作品的複製品——

(a) 是在某國家、地區或地方製作而它在該處是合法地製作的;

(b) 已於自該作品在香港或其他地方發表的首天起計 18 個月屆滿之後的任何時間輸入香港或擬於該 18 個月屆滿之後的任何時間輸入香港;及

(c) 假使是在香港製作即會構成侵犯有關作品的版權,或違反關乎該作品的專用特許協議,

亦不包括符合以下說明的某附屬作品的複製品——

(i) 是在某國家、地區或地方製作而它在該處是合法地製作的;

(ii) 已輸入或擬輸入香港;及

(iii) 假使是在香港製作即會構成侵犯有關作品的版權,或違反關乎該作品的專用特許協議。

(5) 就第 VII 分部(關乎輸入侵犯版權物品的法律程序)而言,“侵犯版權複製品”(infringing copy)並不包括符合以下說明的某作品的複製品或某附屬作品的複製品——

(a) 是在某國家、地區或地方製作而它在該處是合法地製作的;

(b) 已輸入或擬輸入香港;及

(c) 假使是在香港製作即會構成侵犯有關作品的版權,或違反關乎該作品的專用特許協議的。

(6) 凡在任何法律程序中出現某作品的複製品是否侵犯版權複製品的問題,並且證明——

(a) 該複製品是該作品的複製品;及

(b) 版權存在於該作品或曾在任何時間存在於該作品,

則須推定該複製品是在版權存在於該作品時製作,直至相反證明成立為止。

(7) 在本部中,“侵犯版權複製品”(infringing copy)包括憑藉任何下列條文而被視為侵犯版權複製品的複製品——

第 41(5) 條(為教學或考試的目的而製作的複製品);

第 44(3) 條(由教育機構為教育的目的而製作的紀錄);

section 45(3) (reprographic copying by educational establishments for purposes of instruction);

section 46(4)(b) (copies made by librarian or archivist in reliance on false declaration);

section 64(2) (further copies, adaptations, etc. of work in electronic form retained on transfer of principal copy);

section 72(2) (copies made for purpose of advertising artistic work for sale); or

section 77(4) (copies made for purpose of broadcast or cable programme).

(8) For the purpose of subsections (3), (4) and (5), “accessory work” (附屬作品) means a work incorporated in or consisting of—

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

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

(9) For the purpose of subsections (4) and (5), “lawfully made” (合法地製作) does not include the making of a copy of a work in a country, territory or area where there is no law protecting copyright in the work or where the copyright in the work has expired.

[*cf.* 1988 c. 48 s. 27 U.K.]

Defences

36. Defences for the purposes of sections 30 and 31

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

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

第 45(3) 條 (由教育機構為教學的目的而藉翻印進行複製)；

第 46(4)(b) 條 (由圖書館館長及檔案室負責人倚賴虛假的聲明而製作的複製品)；

第 64(2) 條 (在作品的主體複製品轉移時留下的電子形式的另一份複製品、改編本等)；

第 72(2) 條 (為宣傳供售賣的藝術作品而製作的複製品)；或

第 77(4) 條 (為廣播或有線傳播節目的目的而製作的複製品)。

(8) 就第 (3)、(4) 及 (5) 款而言，“附屬作品” (accessory work) 指以下作品——

- (a) 附貼於某物品上或在某物品上展示的標籤所包含或構成的作品；
- (b) 包裝或盛載某物品的包裝物或盛器所包含或構成的作品；
- (c) 附貼於包裝或盛載某物品的包裝物或盛器上或在該等包裝物或盛器上展示的標籤所包含或構成的作品；
- (d) 某物品所附帶並在售賣時與該物品一併提供的書面指示、保證書或其他資料所包含或構成的作品；或
- (e) 某物品所附帶並在售賣時與該物品一併提供的具指示性質的聲音紀錄或影片，

而該物品 (包括標籤、包裝物、盛器、指示、保證書、其他資料、聲音紀錄或影片，視屬何情況而定) 的經濟價值並非主要歸因於該作品的經濟價值。

(9) 就第 (4) 及 (5) 款而言，“合法地製作” (lawfully made) 並不包括在沒有保障作品版權的法律或在作品版權已屆滿的國家、地區或地方製作任何作品的複製品。

[*比照* 1988 c. 48 s. 27 U.K.]

免責辯護

36. 就第 30 及 31 條而言的免責辯護

(1) 現聲明如有某作品的複製品僅憑藉第 35(3) 條而屬侵犯版權複製品，則就第 30 及 31 條而言以及為免生疑問，在根據第 30 或 31 條而就某作品的複製品進行的侵犯版權訴訟中，如被告人證明——

- (a) 他已作出合理查究足以使他自己信納該已輸入或擬輸入香港的該作品的複製品並非該作品的侵犯版權複製品；

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

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

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

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

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

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

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

- (b) 他基於合理理由而信納在有關個案的情況下，該複製品並非侵犯版權複製品；及

(c) 沒有其他本會致使他合理地懷疑該複製品是侵犯版權複製品的情況，則他已證明他沒有理由相信該複製品是侵犯版權複製品。

(2) 法院在裁定被告人是否已根據第 (1) 款證明他沒有理由相信該複製品是侵犯版權複製品時，可顧及的因素包括 (但不限於) 以下事項——

- (a) 他是否已就有關類別作品向有關的行業團體作出查究；
- (b) 他是否已給予通知促請有關的版權擁有人或專用特許持有人注意他在輸入和出售該作品的複製品方面的權益；
- (c) 他是否已遵從就有關類別作品的供應而可能存在的實務守則；
- (d) 對被告作出的該等查究的回應 (如有的話) 是否合理和及時；
- (e) 他是否已獲提供有關的版權擁有人或專用特許持有人 (視屬何情況而定) 的姓名或名稱、地址及其聯絡之詳細資料；
- (f) 他是否已獲提供有關作品首日發表之日期；
- (g) 他是否已獲提供任何有關專用特許之證明。

(3) 凡某人一如第 30 或 31 條所述般侵犯版權，在針對該人侵犯版權的訴訟中，如該人證明以下事項，即可以此作為免責辯護——

- (a) 他已向版權擁有人或專用特許持有人 (視屬何情況而定) 訂購該作品的複製品，以獲得該作品的複製品的供應；
- (b) 他已向某人作出訂購，但該人基於不合理理由而不作出提供或在不合理的條款下始同意提供，故此其作為並不合情理；及
- (c) 有關輸入是在版權擁有人或專用特許持有人作出該不合情理的作為之後並且是在第 35(4)(b) 條指明的期間屆滿之後進行的。

(4) 法院在裁定版權擁有人或專用特許持有人是否已作出不合情理的作為時，須將個別行業為有秩序地分發該類別作品的複製品而既有的慣常做法列為考慮因素，尤其須考慮該訂單如獲履行，會否與版權擁有人或專用特許持有人對該作品的正常利用有所抵觸，或會否不合理地損害版權擁有人或專用特許持有人的合法權益。

(5) In determining whether supply is withheld on “unreasonable grounds” or whether the agreement to supply is on “unreasonable terms” the court shall have regard to the reasonable requirements of the particular trade or particular public, including but not limited to price and delivery times, the practice of the trade with existing stocks in Hong Kong, the practice of the trade generally for the product in its particular medium, category or language, the size of the order, enquiries made and whether or not any person has previously had unfulfilled orders with the particular supplier.

DIVISION III

ACTS PERMITTED IN RELATION TO COPYRIGHT WORKS

Introductory

37. Introductory provisions

(1) The provisions of this Division specify acts which may be done in relation to copyright works notwithstanding the subsistence of copyright; they relate only to the question of infringement of copyright and do not affect any other right or obligation restricting the doing of any of the specified acts.

(2) Where it is provided by this Division that an act does not infringe copyright, or may be done without infringing copyright, and no particular description of copyright work is mentioned, the act in question does not infringe the copyright in a work of any description.

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

(4) No inference is to be drawn from the description of any act which may by virtue of this Division be done without infringing copyright as to the scope of the acts restricted by the copyright in any description of work.

(5) The provisions of this Division are to be construed independently of each other, so that the fact that an act does not fall within one provision does not mean that it is not covered by another provision.

[*cf.* 1988 c. 48 s. 28 U.K.]

General

38. Research and private study

(1) Fair dealing with a work of any description for the purposes of research or private study does not infringe any copyright in the work or, in the case of a published edition, in the typographical arrangement.

(5) 法院在裁定是否基於“不合理理由”而不作出提供或在“不合理的條款下”始同意提供時，須考慮個別行業或個別公眾的合理需求，包括但不限於價格及提貨時間、該行業對在香港存貨之處理、該行業對個別媒體、類別或語言的產品之一般處理、訂單之大小、已作之查詢以及有無任何人士以前曾經向個別供應商訂貨而未得到兌現。

第 III 分部

就版權作品而允許的作為

引言

37. 引言條文

(1) 本分部的條文指明某些在儘管有版權存在的情況下仍可就版權作品而作出的作為；該等條文只關乎侵犯版權的問題而不影響限制作出任何該等指明作為的任何其他權利或義務。

(2) 凡本分部規定某項作為不屬侵犯版權，或可作出該作為而不侵犯版權，而沒有特別提及某類別的版權作品，則有關作為並不屬侵犯任何類別的作品的版權。

(3) 在決定本分部指明的作為是否可在儘管有版權存在的情況下就版權作品而作出時，基本考慮因素是該項作為並不與版權擁有人對作品的正常利用有所抵觸，以及該項作為並沒有不合理地損害版權擁有人的合法權益。

(4) 不得從憑藉本分部可予作出而不屬侵犯版權的任何作為的描述，而推論受任何類別作品的版權所限制的作為的範圍。

(5) 本分部各條條文的解釋互相獨立，故某作為並不屬於某條文的範圍，並不表示另一條文不涵蓋該作為。

[*比照* 1988 c. 48 s. 28 U.K.]

一般條文

38. 研究及私人研習

(1) 為研究或私人研習而公平處理任何類別的作品，不屬侵犯該等作品的任何版權，就已發表版本而言，亦不屬侵犯其排印編排的版權。

(2) Copying by a person other than the researcher or student himself is not fair dealing if—

- (a) in the case of a librarian, or a person acting on behalf of a librarian, he does anything which regulations under section 49 would not permit to be done under section 47 or 48 (articles or parts of published works: restriction on multiple copies of same material); or
- (b) in any other case, the person doing the copying knows or has reason to believe that it will result in copies of substantially the same material being provided to more than one person at substantially the same time and for substantially the same purpose.

(3) In determining whether any dealing with a work of any description is fair dealing, the factors to be considered include—

- (a) the purpose and nature of the dealing;
- (b) the nature of the work; and
- (c) the amount and substantiality of the portion dealt with in relation to the work as a whole.

[cf. 1988 c. 48 s. 29 U.K.]

39. Criticism, review and news reporting

(1) Fair dealing with a work for the purpose of criticism or review, of that or another work or of a performance of a work, if it is accompanied by a sufficient acknowledgement, does not infringe any copyright in the work or, in the case of a published edition, in the typographical arrangement.

(2) Fair dealing with a work for the purpose of reporting current events, if (subject to subsection (3)) it is accompanied by a sufficient acknowledgement, does not infringe any copyright in the work.

(3) No acknowledgement is required in connection with the reporting of current events by means of a sound recording, film, broadcast or cable programme.

[cf. 1988 c. 48 s. 30 U.K.]

40. Incidental inclusion of copyright material

(1) Copyright in a work is not infringed by its incidental inclusion in an artistic work, sound recording, film, broadcast or cable programme.

(2) The copyright is also not infringed by the issue or making available to the public of copies, or the playing, showing, broadcasting or inclusion in a cable programme service, of anything whose making was, by virtue of subsection (1), not an infringement of the copyright.

- (2) 由並非屬研究者或學生的人在以下的情況下進行複製，不屬公平處理——
 - (a) 由圖書館館長或代其行事的人作出根據第 49 條訂立的規則不允許根據第 47 或 48 條作出的事情 (文章或已發表作品的部分：對製造多份相同材料的複製品的限制)；或
 - (b) 在其他情況下，進行複製的人知道或有理由相信如此複製會造成實質上相同材料的複製品在實質上相同的時間提供予多於一人作實質上相同的用途。
- (3) 在決定對任何類別作品的處理是否屬公平處理時，須考慮的因素包括——
 - (a) 該項處理的目的及性質；
 - (b) 該作品的性質；及
 - (c) 就該作品的整項而言，所處理的部分所佔的數量及實質程度。

[比照 1988 c. 48 s. 29 U.K.]

39. 批評、評論及新聞報導

(1) 為批評或評論某一作品或另一作品或批評或評論某一作品的表演而公平處理該某一作品，只要附有足夠的確認聲明，即不屬侵犯該某一作品的任何版權，而就已發表版本而言，亦不屬侵犯其排印編排的版權。

(2) 為報導時事而公平處理某一作品，只要附有足夠的確認聲明 (除第 (3) 款另有規定外)，不屬侵犯該作品的任何版權。

(3) 藉聲音紀錄、影片、廣播或有線傳播節目報導時事，不須附有確認聲明。

[比照 1988 c. 48 s. 30 U.K.]

40. 附帶地包括版權材料

(1) 某項作品附帶地包括在藝術作品、聲音紀錄、影片、廣播或有線傳播節目內，不屬侵犯該作品的版權。

(2) 某項東西的製作若憑藉第 (1) 款而不屬侵犯版權，則向公眾發放或提供該東西的複製品，或播放、放映、廣播該項東西，或將該項東西包括在有線傳播節目服務內，亦不屬侵犯版權。

(3) A musical work, words spoken or sung with music, or so much of a sound recording, broadcast or cable programme as includes a musical work or such words, is not regarded as incidentally included in another work if it is deliberately included.

[*cf.* 1988 c. 48 s. 31 U.K.]

Education

41. Things done for purposes of instruction or examination

(1) Copyright in a literary, dramatic, musical or artistic work is not infringed by its being copied, to a reasonable extent, in the course of instruction or of preparation for instruction, if the copying—

- (a) is done by a person giving or receiving instruction; and
- (b) is not by means of a reprographic process.

(2) Copyright in a sound recording, film, broadcast or cable programme is not infringed by its being copied by making a film or film sound-track in the course of instruction, or of preparation for instruction, in the making of films or film sound-tracks, if the copying is done by a person giving or receiving instruction.

(3) Copyright is not infringed by anything done for the purposes of an examination by way of setting the questions, communicating the questions to the candidates or answering the questions.

(4) Subsection (3) does not extend to the making of a reprographic copy of a musical work for use by an examination candidate in performing the work.

(5) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with, the copy is treated as an infringing copy for the purpose of that dealing and if that dealing infringes copyright, for all subsequent purposes.

For this purpose “dealt with” (進行交易) means sold or let for hire or offered or exposed for sale or hire.

[*cf.* 1988 c. 48 s. 32 U.K.]

42. Anthologies for educational use

(1) The inclusion of a short passage from a published literary or dramatic work in a collection which—

- (a) is intended for use in educational establishments and is so described in its title, and in any advertisements issued by or on behalf of the publisher; and

(3) 蓄意將音樂作品、伴隨音樂而講出或唱出的文字包括在另一作品中，或蓄意將聲音紀錄、廣播或有線傳播節目中包括音樂作品或該等文字的部分包括在另一作品中，並不視為附帶地包括在該另一作品中。

[*比照* 1988 c. 48 s. 31 U.K.]

教育

41. 為教學或考試的目的而作出的事情

(1) 如在教學或教學準備過程中在合理的範圍內複製文學作品、戲劇作品、音樂作品或藝術作品，而該複製——

- (a) 由教學或接受教學的人作出；及
- (b) 並非藉翻印程序進行，

則該複製不屬侵犯該作品的版權。

(2) 在影片製作或影片聲帶製作的教學或教學準備過程中，因製作影片或影片聲帶而由教學或接受教學的人複製聲音紀錄、影片、廣播或有線傳播節目，並不屬侵犯該作品的版權。

(3) 為考試的目的並藉擬出試題、向考生傳達試題或解答試題而作出的任何事情，不屬侵犯版權。

(4) 第(3)款並不延伸而適用於製作音樂作品的翻印複製品供考生表演該作品之用。

(5) 凡任何複製品(假使非因本條該複製品即屬侵犯版權複製品)按照本條製作，但其後有人進行該複製品的交易，則就該項交易而言，該複製品須視為侵犯版權複製品，又如該項交易侵犯版權，則就所有其後的目的而言，該複製品須視為侵犯版權複製品。

就本款而言，“進行交易”(dealt with)指出售、出租、要約出售或要約出租，或為出售或出租而展示。

[*比照* 1988 c. 48 s. 32 U.K.]

42. 供教育用途的選集

(1) 凡從已發表的文學作品或戲劇作品中摘錄短的片段而將其包括在集合本中，而該集合本——

- (a) 是擬在教育機構中使用的，並且在集合本名稱中及由集合本的發表人發放或代表集合本的發表人發放的宣傳品中均如此描述；及

(b) consists mainly of material in which no copyright subsists, does not infringe the copyright in the work if the work itself is not intended for use in such establishments and the inclusion is accompanied by a sufficient acknowledgement.

(2) Subsection (1) does not authorize the inclusion of more than 2 excerpts from copyright works by the same author in collections published by the same publisher over any period of 5 years.

(3) In relation to any given passage the reference in subsection (2) to excerpts from works by the same author—

(a) is taken to include excerpts from works by him in collaboration with another; and

(b) if the passage in question is from such a work, is taken to include excerpts from works by any of the authors, whether alone or in collaboration with another.

(4) References in this section to the use of a work in an educational establishment are to any use for the educational purposes of such an establishment.

[*cf.* 1988 c. 48 s. 33 U.K.]

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

(1) The performance of a literary, dramatic or musical work before an audience consisting of teachers and pupils at an educational establishment and other persons directly connected with the activities of the establishment—

(a) by a teacher or pupil in the course of the activities of the establishment; or

(b) at the establishment by any person for the purposes of instruction, is not a public performance for the purposes of infringement of copyright.

(2) The playing or showing of a sound recording, film, broadcast or cable programme before such audience at an educational establishment for the purposes of instruction is not a playing or showing of the work in public for the purposes of infringement of copyright.

(3) A person is for this purpose directly connected with the activities of an educational establishment if he is the parent or guardian of a pupil at the establishment.

[*cf.* 1988 c. 48 s. 34 U.K.]

(b) 主要是由沒有版權存在的材料構成的，則只要該等作品本身並非擬在該教育機構中使用並且將該等作品包括在該集合本中是附有足夠的確認聲明的，將該片段包括在該集合本中並不屬侵犯該作品的版權。

(2) 第(1)款並不授權同一發表人在任何5年期間內，從由同一作者製作的版權作品中抽取多於2項摘錄，以包括在該發表人所發表的集合本中。

(3) 就作品的任何特定片段而言，第(2)款提述的從由同一作者製作的作品中抽取摘錄——

(a) 須視作包括從由該作者與他人共同製作的作品中抽取摘錄；及

(b) 如有關片段是從該等作品中抽取的，則須視作包括從由其中任何一位作者製作的作品(不論該作品為該作者單獨製作或與另一作者共同製作)中抽取摘錄。

(4) 在本條中，凡提述在教育機構中使用作品，即提述為該等機構的教育目的而使用。

[*比照* 1988 c. 48 s. 33 U.K.]

43. 在教育機構的活動過程中表演、播放或放映作品

(1) 凡——

(a) 在教育機構的活動過程中由教師或學生表演文學作品、戲劇作品或音樂作品；或

(b) 在教育機構中由任何人為教學的目的而表演文學作品、戲劇作品或音樂作品，

而觀眾或聽眾只有該機構的教師和學生及與該機構的活動有直接關連的其他人，則就侵犯版權而言，該表演不屬公開表演。

(2) 為教學目的而在教育機構中向上述觀眾或聽眾播放或放映聲音紀錄、影片、廣播或有線傳播節目，就侵犯版權而言，不屬公開播放或放映有關作品。

(3) 就此而言，任何人如屬教育機構的學生的父母或監護人，該人即屬與該機構的活動有直接關連的人。

[*比照* 1988 c. 48 s. 34 U.K.]

44. Recording by educational establishments of broadcasts and cable programmes

(1) A recording of a broadcast or cable programme, or a copy of such a recording may be made by or on behalf of an educational establishment for the educational purposes of that establishment without thereby infringing the copyright in the broadcast or cable programme, or in any work included in it, if—

- (a) an acknowledgement of authorship or other creative effort contained in the work recorded is incorporated in the recording made by the establishment; and
- (b) it is not made for gain.

(2) Recording or copying is not authorized by this section if, or to the extent that, licences under licensing schemes are available authorizing the recording or copying in question and the person making the recording or copies knew or ought to have been aware of that fact.

(3) Where a recording or copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with, the copy is treated as an infringing copy for the purposes of that dealing and if that dealing infringes copyright, for all subsequent purposes.

For this purpose “dealt with” (進行交易) means sold or let for hire or offered or exposed for sale or hire.

[*cf.* 1988 c. 48 s. 35 U.K.]

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

(1) Reprographic copies of artistic works or of passages from published literary, dramatic or musical works may, to a reasonable extent, be made by or on behalf of an educational establishment for the purposes of instruction without infringing any copyright in the work, or in the typographical arrangement.

(2) Copying is not authorized by this section if, or to the extent that, licences under licensing schemes are available authorizing the copying in question and the person making the copies knew or ought to have been aware of that fact.

(3) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with, it is treated as an infringing copy for the purposes of that dealing, and if that dealing infringes copyright, for all subsequent purposes.

For this purpose “dealt with” (進行交易) means sold or let for hire or offered or exposed for sale or hire.

[*cf.* 1988 c. 48 s. 36 U.K.]

44. 由教育機構製作廣播及有線傳播節目的紀錄

(1) 任何廣播或有線傳播節目的紀錄或該紀錄的複製品，在以下情況之下，可由教育機構或代教育機構為該機構的教育目的而製作，而不屬侵犯該廣播或有線傳播節目或包括在其中的任何作品的版權——

- (a) 該機構製作的該紀錄已包含確認作者的聲明或確認被記錄的作品所載的其他創作努力的聲明；及
- (b) 並非為圖利而製作。

(2) 如有特許計劃下的特許授權進行有關的記錄或複製，而製作紀錄或複製品的人已知道或應已知道該事實，則本條並不授權進行有關的記錄或複製或在該特許所授權的範圍內進行有關的記錄或複製。

(3) 凡任何紀錄或複製品（假使非因本條該複製品即屬侵犯版權複製品）按照本條製作，但其後有人進行該複製品的交易，則就該項交易而言，該複製品須視為侵犯版權複製品，又如該項交易侵犯版權，則就所有其後的目的而言，該複製品須視為侵犯版權複製品。

就本款而言，“進行交易” (dealt with) 指出售、出租、要約出售或要約出租，或為出售或出租而展示。

[*比照* 1988 c. 48 s. 35 U.K.]

45. 教育機構將已發表作品中的片段藉翻印複製

(1) 教育機構或其代表可為教學目的，在合理的範圍內製作藝術作品或已發表的文學作品、戲劇作品或音樂作品的片段的翻印複製品，而不屬侵犯該等作品的版權及排印編排的版權。

(2) 如有特許計劃下的特許授權進行有關的複製，而製作複製品的人已知道或應已知道該事實，則本條並不授權進行有關的複製或在該特許所授權的範圍內進行有關的複製。

(3) 凡任何複製品（假使非因本條該複製品即屬侵犯版權複製品）按照本條製作，但其後有人進行該複製品的交易，則就該項交易而言，該複製品須視為侵犯版權複製品，又如該項交易侵犯版權，則就所有其後的目的而言，該複製品須視為侵犯版權複製品。

就本款而言，“進行交易” (dealt with) 指出售、出租、要約出售或要約出租，或為出售或出租而展示。

[*比照* 1988 c. 48 s. 36 U.K.]

Libraries and archives

46. Libraries and archives: introductory

- (1) The Secretary for Trade and Industry may—
- (a) by regulations prescribe conditions; and
 - (b) by notice in the Gazette specify libraries or archives,
- for the purposes of any provision in sections 47 to 53 (copying by librarians and archivists).
- (2) In sections 47 to 53—
- (a) references in any provision to the prescribed conditions are to the conditions prescribed for the purposes of that provision under subsection (1)(a); and
 - (b) references in any provision to a specified library or archive are to a library or archive of a description specified for the purposes of that provision under subsection (1)(b).
- (3) The regulations may—
- (a) provide that, where a librarian or archivist is required to be satisfied as to any matter before making or supplying a copy of a work—
 - (i) he may rely on a signed declaration as to that matter by the person requesting the copy, unless he is aware that it is false in a material particular; and
 - (ii) in such cases as may be prescribed, he shall not make or supply a copy in the absence of a signed declaration in such form as may be prescribed;
 - (b) make different provisions for different descriptions of libraries or archives and for different purposes.
- (4) Where a person requesting a copy makes a declaration which is false in a material particular and is supplied with a copy which would have been an infringing copy if made by him—
- (a) he is liable for infringement of copyright as if he had made the copy himself; and
 - (b) the copy is treated as an infringing copy.
- (5) References in this section, and in sections 47 to 53, to the librarian or archivist include a person acting on his behalf.

[*cf.* 1988 c. 48 s. 37 U.K.]

47. Copying by librarians: articles in periodicals

- (1) The librarian of a specified library may, if the prescribed conditions are complied with, make and supply a copy of an article in a periodical without infringing any copyright in the text, in any illustrations accompanying the text or in the typographical arrangement.

圖書館及檔案室

46. 圖書館及檔案室：引言

- (1) 為施行在第 47 至 53 條 (由圖書館館長及檔案室負責人進行複製) 中任何條文，工商司可——
- (a) 藉規例訂明條件；及
 - (b) 藉憲報公告指明圖書館或檔案室。
- (2) 在第 47 至 53 條中——
- (a) 在任何條文中，凡提述訂明條件，即提述為施行該等條文而根據第 (1)(a) 款訂明的條件；及
 - (b) 在任何條文中，凡提述指明圖書館或指明檔案室，即提述為施行該等條文而根據第 (1)(b) 款指明的圖書館或檔案室。
- (3) 上述規例可——
- (a) 規定凡圖書館館長或檔案室負責人在製作或供應某作品的複製品前須信納某事項——
 - (i) 則該館長或負責人可倚賴由要求獲得該複製品的人就該事項而作出經簽署的聲明，但如該館長或負責人知道該聲明在任何要項上屬虛假，則屬例外；及
 - (ii) 在訂明的情況下，如沒有按訂明格式作出經簽署的聲明，則該館長或負責人不得製作或供應複製品；
 - (b) 就不同類別的圖書館或檔案室和為不同目的而訂立不同的規定。
- (4) 凡要求獲得複製品的人作出在任何要項上屬虛假的聲明並獲供應複製品，而該複製品假使由該人製作即屬侵犯版權複製品，則——
- (a) 該人須負上侵犯版權的法律責任，猶如他自己製作該複製品一樣；及
 - (b) 該複製品須視為侵犯版權複製品。
- (5) 在本條及第 47 至 53 條中，凡提述圖書館館長或檔案室負責人，包括代其行事的人。

[*比照* 1988 c. 48 s. 37 U.K.]

47. 由圖書館館長製作複製品：期刊內的文章

- (1) 如訂明條件獲符合，指明圖書館的館長可製作和供應期刊內的文章的複製品，而不屬侵犯該文本的版權、附同該文本的任何插圖的版權，或該文本的排印編排的版權。

- (2) The prescribed conditions must include the following—
- (a) that copies are supplied only to persons satisfying the librarian that they require them for purposes of research or private study, and will not use them for any other purpose;
 - (b) that no person is furnished with more than one copy of the same article or with copies of more than one article contained in the same issue of a periodical; and
 - (c) that persons to whom copies are supplied are required to pay for them a sum not less than the cost (including a contribution to the general expenses of the library) attributable to their production.

[*cf.* 1988 c. 48 s. 38 U.K.]

48. Copying by librarians: parts of published works

(1) The librarian of a specified library may, if the prescribed conditions are complied with, make and supply from a published edition a copy of part of a literary, dramatic or musical work (other than an article in a periodical) without infringing any copyright in the work, in any illustrations accompanying the work or in the typographical arrangement.

- (2) The prescribed conditions must include the following—
- (a) that copies are supplied only to persons satisfying the librarian that they require them for purposes of research or private study, and will not use them for any other purpose;
 - (b) that no person is furnished with more than one copy of the same material or with a copy of more than a reasonable proportion of any work; and
 - (c) that persons to whom copies are supplied are required to pay for them a sum not less than the cost (including a contribution to the general expenses of the library) attributable to their production.

[*cf.* 1988 c. 48 s. 39 U.K.]

49. Restriction on production of multiple copies of the same material

(1) Regulations for the purposes of sections 47 and 48 (copying by librarian of article or part of published work) must contain provision to the effect that a copy is supplied only to a person satisfying the librarian that his requirement is not related to any similar requirement of another person.

- (2) 訂明條件必須包括以下各項——
- (a) 要求獲得複製品的人，須令圖書館館長信納他是為研究或私人研習的目的而需要該等複製品，並且不會為任何其他目的使用該等複製品，方可獲供應該等複製品；
 - (b) 不得提供同一篇文章的多於一份複製品予同一人，亦不得從同一期的期刊提供多於一篇文章的複製品予同一人；及
 - (c) 獲供應複製品的人須就該等複製品支付一筆不少於製作該等複製品的成本(包括對圖書館的一般支出所作分擔)的款項。

[*比照* 1988 c. 48 s. 38 U.K.]

48. 由圖書館館長製作複製品：已發表作品的部分

(1) 如訂明條件獲符合，指明圖書館的館長可從文學作品、戲劇作品或音樂作品(但並非期刊內的文章)的已發表版本，製作和供應該等作品的一部分的複製品，而不屬侵犯該作品的版權、附同該作品的任何插圖的版權，或該作品的排印編排的版權。

- (2) 訂明條件必須包括以下各項——
- (a) 要求獲得複製品的人，須令圖書館館長信納他是為研究或私人研習的目的而需要該等複製品，並且不會為任何其他目的使用該等複製品，方可獲供應該等複製品；
 - (b) 不得提供同一份材料的多於一份複製品予同一人，亦不得提供任何作品的超出合理比例的部分的複製品；及
 - (c) 獲供應複製品的人須就該等複製品支付一筆不少於製作該等複製品的成本(包括對圖書館的一般支出所作分擔)的款項。

[*比照* 1988 c. 48 s. 39 U.K.]

49. 對製造多份相同材料的複製品的限制

(1) 為施行第47及48條(由圖書館館長複製文章或已發表作品的一部分)而訂立的規例，須載有條文，規定要求獲得複製品的人，須令圖書館館長信納他對複製品的需求與其他人對該複製品的相近需求並無關連，方可獲供應該複製品。

- (2) The regulations may provide—
- (a) that requirements are regarded as similar if the requirements are for copies of substantially the same material at substantially the same time and for substantially the same purpose; and
 - (b) that requirements of persons are regarded as related if those persons receive instruction to which the material is relevant at the same time and place.

[cf. 1988 c. 48 s. 40 U.K.]

50. Copying by librarians: supply of copies to other libraries

(1) The librarian of a specified library may, if the prescribed conditions are complied with, make and supply to another specified library a copy of—

- (a) an article in a periodical;
- (b) the whole or part of a published edition of a literary, dramatic or musical work; or
- (c) a sound recording or film,

without infringing any copyright in the text of the article, in the work, in any illustration accompanying it, in the typographical arrangement, or in the sound recording or film, as the case may be.

(2) Subsection (1)(b) and (c) does not apply if at the time the copy is made the librarian making it knows, or could by reasonable inquiry ascertain, the name and address of a person entitled to authorize the making of the copy.

[cf. 1988 c. 48 s. 41 U.K.]

51. Copying by librarians or archivists: replacement copies of works

(1) The librarian or archivist of a specified library or archive may, if the prescribed conditions are complied with, make a copy from any item in the permanent collection of the library or archive—

- (a) in order to preserve or replace that item by placing the copy in its permanent collection in addition to or in place of it; or
- (b) in order to replace in the permanent collection of another specified library or archive an item which has been lost, destroyed or damaged,

without infringing the copyright in any literary, dramatic or musical work, in any illustrations accompanying such a work or, in the case of a published edition, in the typographical arrangement or, in the case of a sound recording or a film, in the sound recording or film.

(2) The prescribed conditions must include provision for restricting the making of copies to cases where it is not reasonably practicable to purchase a copy of the item in question to fulfill that purpose.

[cf. 1988 c. 48 s. 42 U.K.]

(2) 上述規例可規定——

- (a) 如在實質上相同的時間為實質上相同的目的要求獲得實質上屬相同材料的複製品，則該等對複製品的需求須視為相近；及
- (b) 如某些人在同一時間及地點接受與材料有關的指示，則該等人的需求須視為有關連。

[比照 1988 c. 48 s. 40 U.K.]

50. 由圖書館館長製作複製品：供應複製品予其他圖書館

(1) 如訂明條件獲符合，指明圖書館的館長可製作和提供下列項目的複製品予另一指明圖書館——

- (a) 期刊內的文章；
- (b) 文學作品、戲劇作品或音樂作品的已發表版本的整項或部分；或
- (c) 聲音紀錄或影片，

而不屬侵犯該文章文本的版權、該作品的版權、附同該文章或作品的任何插圖的版權、該文章或作品的排印編排的版權，或該聲音紀錄或影片的版權（視屬何情況而定）。

(2) 圖書館館長如在製作複製品時，知道有權授權製作該複製品的人的姓名或名稱和地址，或經合理查究後可確定該人的姓名或名稱和地址，則第(1)(b)及(c)款並不適用。

[比照 1988 c. 48 s. 41 U.K.]

51. 由圖書館館長或檔案室負責人製作複製品：作品的替代複製品

(1) 如訂明條件獲符合，則指明圖書館的館長或指明檔案室的負責人可從屬該圖書館或檔案室的永久收藏品的任何項目，製作複製品——

- (a) 並藉將複製品以增補或代替原有項目的形式收入永久收藏品，以保存或替代該原有項目；或
- (b) 以替代屬另一指明圖書館或指明檔案室的永久收藏品中已失去、毀滅或損毀的項目，

而不屬侵犯任何文學作品、戲劇作品或音樂作品的版權、附同該等作品的任何插圖的版權、屬已發表版本的作品的排印編排的版權，而就任何聲音紀錄或影片而言，則不屬侵犯該聲音紀錄或影片的版權。

(2) 訂明條件必須包括施加以下限制的條文：只有在購買有關項目作該用途並非合理地切實可行的情況下，方可製作複製品。

[比照 1988 c. 48 s. 42 U.K.]

52. Copying by librarians or archivists: certain unpublished works

(1) The librarian or archivist of a specified library or archive may, if the prescribed conditions are complied with, make and supply a copy of the whole or part of—

- (a) a literary, dramatic or musical work from a document (including a document in electronic form); or
- (b) a sound recording or film,

in the library or archive without infringing any copyright in the work or any illustrations accompanying it or in the sound recording or film.

(2) This section does not apply if—

- (a) the work had been published before it was deposited in the library or archive; or
- (b) the copyright owner has prohibited copying of the work,

and at the time the copy is made the librarian or archivist making it is, or ought to be, aware of that fact.

(3) The prescribed conditions must include the following—

- (a) that copies are supplied only to persons satisfying the librarian or archivist that they require them for purposes of research or private study and will not use them for any other purpose;
- (b) that no person is furnished with more than one copy of the same material; and
- (c) that persons to whom copies are supplied are required to pay for them a sum not less than the cost (including a contribution to the general expenses of the library or archive) attributable to their production.

[cf. 1988 c. 48 s. 43 U.K.]

53. Copying by librarians or archivists: articles of cultural or historical importance

The librarian or archivist of a specified library or archive may make a copy of an article of cultural or historical importance or interest and deposit the copy at the specified library or archive without infringing any copyright in respect of the article if the article is likely to be lost to Hong Kong through sale or export.

[cf. 1988 c. 48 s. 44 U.K.]

52. 由圖書館館長或檔案室負責人製作複製品： 某些未發表的作品

(1) 如訂明條件獲符合，指明圖書館的館長或指明檔案室的負責人可在圖書館或檔案室——

- (a) 從任何文件(包括電子形式的文件)製作和供應文學作品、戲劇作品或音樂作品的整項或部分的複製品；或
- (b) 製作和供應聲音紀錄或影片的整項或部分的複製品，

而不屬侵犯該等作品或附同該等作品的任何插圖或聲音紀錄或影片的版權。

(2) 如——

- (a) 該作品在存放於該圖書館或檔案室之前已經發表；或
- (b) 版權擁有人已禁止將作品複製，

而製作該等複製品的圖書館館長或檔案室負責人在製作複製品時，是知道或應該知道該事實的，則本條並不適用。

(3) 訂明條件必須包括以下各項——

- (a) 要求獲得複製品的人，須令圖書館館長或檔案室負責人信納他是為研究或私人研習的目的而需要該等複製品，並且不會用為任何其他目的使用該等複製品，方可獲供應該等複製品；
- (b) 不得提供同一份材料的多於一份複製品予同一人；及
- (c) 獲供應複製品的人須就該等複製品支付一筆不少於製作該等複製品的成本(包括對圖書館或檔案室的一般支出所作分擔)的款項。

[比照 1988 c. 48 s. 43 U.K.]

53. 由圖書館館長或檔案室負責人製作複製品： 在文化或歷史方面有重要性的物品

如某物品在文化或歷史方面有重要性或有令人感興趣之處，並相當可能因出售或輸出而使香港失去該物品，則指明圖書館的館長或指明檔案室的負責人可製作該物品的複製品和將複製品存放於該圖書館或檔案室，而不屬侵犯有關該物品的版權。

[比照 1988 c. 48 s. 44 U.K.]

Public administration**公共行政****54. Legislative Council and judicial proceedings**

(1) Copyright is not infringed by anything done for the purposes of the proceedings of the Legislative Council or judicial proceedings.

(2) Copyright is not infringed by anything done for the purposes of reporting such proceedings; but this is not to be construed as authorizing the copying of a work which is itself a published report of the proceedings.

[*cf. 1988 c. 48 s. 45 U.K.*]

55. Statutory inquiries

(1) Copyright is not infringed by anything done for the purposes of the proceedings of a statutory inquiry.

(2) Copyright is not infringed by anything done for the purposes of reporting any such proceedings held in public; but this is not to be construed as authorizing the copying of a work which is itself a published report of the proceedings.

(3) Copyright in a work is not infringed by the issue or making available to the public of copies of the report of a statutory inquiry containing the work or material from it.

(4) In this section—

“statutory inquiry” (法定研訊) means an inquiry held or investigation conducted in pursuance of—

(a) the Commissions of Inquiry Ordinance (Cap. 86); or

(b) a duty imposed or power conferred by or under an Ordinance.

[*cf. 1988 c. 48 s. 46 U.K.*]

56. Material open to public inspection or on official register

(1) Where material is open to public inspection pursuant to a statutory requirement, or is on a statutory register, copyright is not infringed by the copying of so much of the material as contains factual information of any description, by or with the authority of the appropriate person, for a purpose which does not involve the issuing or making available of copies to the public.

(2) Where material is open to public inspection pursuant to a statutory requirement, copyright is not infringed by the copying or issuing or making available to the public of copies of the material, by or with the authority of the appropriate person, for the purpose of enabling the material to be inspected at a more convenient time or place or otherwise facilitating the exercise of any right for the purpose of which the requirement is imposed.

54. 立法局程序及司法程序

(1) 為立法局程序或司法程序的目的而作出任何事情，並不屬侵犯版權。

(2) 為報導立法局程序或司法程序的目的而作出任何事情，並不屬侵犯版權；但這不得解釋為授權任何人複製本身是該等程序的已發表報導的作品。

[*比照 1988 c. 48 s. 45 U.K.*]

55. 法定研訊

(1) 為法定研訊的程序的目的是作出任何事情，並不屬侵犯版權。

(2) 為報導公開進行的該等程序的目的而作出任何事情，並不屬侵犯版權；但這不得解釋為授權任何人複製本身是該等程序的已發表報導的作品。

(3) 向公眾發放或提供法定研訊的載有某作品或其材料的報告書的文本，並不屬侵犯該作品的版權。

(4) 在本條中——

“法定研訊” (statutory inquiry) 指——

(a) 依據《調查委員會條例》(第 86 章) 進行的研訊或調查；或

(b) 由條例或根據條例所施加的責任或由條例或根據條例所賦予的權力，而進行的研訊或調查。

[*比照 1988 c. 48 s. 46 U.K.*]

56. 開放予公眾查閱或在公事登記冊內的材料

(1) 依據法例規定須開放予公眾查閱的材料，或法定登記冊內的材料，如由適當的人或在其授權下複製，並且只複製該材料中屬於任何類別的事實資料，而複製的目的並不涉及向公眾發放或提供該等複製品，則該項複製並不屬侵犯版權。

(2) 依據法例規定須開放予公眾查閱的材料的複製品如由適當的人或在其授權下複製或向公眾發放或提供，而目的是讓公眾可在較方便的時間或地點查閱該等材料，或為方便行使某項權利 (而該法例規定是為該項權利的行使而施加的)，則該項複製或向公眾發放或提供並不屬侵犯版權。

(3) Where material which is open to public inspection pursuant to a statutory requirement, or which is on a statutory register, contains information about matters of general scientific, technical, commercial or economic interest, copyright is not infringed by the copying or issuing or making available to the public of copies of the material, by or with the authority of the appropriate person, for the purpose of disseminating that information.

(4) The Governor may by regulation provide that subsection (1), (2) or (3) applies, in such cases as may be specified in the regulation, only to copies marked in such manner as may be so specified.

(5) The Governor may by regulation provide that subsections (1) to (3) apply, to such extent and with such modifications as may be specified in the regulation—

- (a) to material made open to public inspection by—
 - (i) an international organization specified in the regulation; or
 - (ii) a person so specified who has functions in Hong Kong under an international agreement to which Hong Kong is a party; or
- (b) to a register maintained by an international organization specified in the regulation,

as they apply in relation to material open to public inspection pursuant to a statutory requirement or to a statutory register.

(6) In this section—

“appropriate person” (適當的人) means the person required to make the material open to public inspection or, as the case may be, the person maintaining the statutory register;

“statutory register” (法定登記冊) means a register maintained in pursuance of a requirement imposed by or under an Ordinance;

“statutory requirement” (法例規定) means a requirement imposed by or under an Ordinance.

[cf. 1988 c. 48 s. 47 U.K.]

57. Material communicated to the Government in the course of public business

(1) This section applies where a work has in the course of public business been communicated to the Government for any purpose, by or with the licence of the copyright owner and a document or other material thing recording or embodying the work is owned by or in the custody or control of the Government.

(3) 凡依據法例規定須開放予公眾查閱的材料，或法定登記冊內的材料，載有一般人感興趣的科學、技術、商業或經濟方面的資料，如由適當的人或在其授權下複製該等材料或向公眾發放或提供該等材料的複製品，而目的是使該等資料得以傳布，則該項複製或向公眾發放或提供並不屬侵犯版權。

(4) 總督可藉規例規定在規例指明的情況下，第(1)、(2)或(3)款只適用於按規例指明的方式而加有標記的複製品。

(5) 總督可藉規例規定第(1)至(3)款須按規例指明的程度及作出的變通而適用於以下項目，一如第(1)至(3)款適用於依據法例規定須開放予公眾查閱的材料或法定登記冊內的材料一樣——

- (a) (i) 由規例所指明的國際組織開放予公眾查閱的材料；或
- (ii) 由規例所指明的人開放予公眾查閱的材料，而該人乃根據香港是締約一方的國際協議而在香港具有職能者；或
- (b) 由規例所指明的國際組織備存的登記冊。

(6) 在本條中——

“法例規定” (statutory requirement) 指由條例或根據條例施加的規定；

“法定登記冊” (statutory register) 指依據由條例或根據條例施加的規定而備存的登記冊、註冊紀錄冊或類似的名冊；

“適當的人” (appropriate person) 指須開放材料予公眾查閱的人或備存法定登記冊的人 (視屬何情況而定)。

[比照 1988 c. 48 s. 47 U.K.]

57. 在公務過程中傳達給政府的材料

(1) 凡任何作品在公務過程中由版權擁有人或在版權擁有人的特許下已為任何目的而傳達予政府，而記錄或收錄該作品的文件或其他實物是由政府擁有或由政府保管或控制的，本條即適用。

(2) The Government may, for the purpose for which the work was communicated to it, or any related purpose which could reasonably have been anticipated by the copyright owner, copy the work, or issue or make available copies of the work to the public without infringing any copyright in the work.

(3) The Government may not copy a work, or issue or make available copies of a work to the public, by virtue of this section if the work has previously been published otherwise than by virtue of this section.

(4) In subsection (1) “public business” (公務) includes any activity carried on by the Government.

(5) This section has effect subject to any agreement to the contrary between the Government and the copyright owner.

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

58. Public records

(1) Material which is comprised in public records which are open to public inspection may be copied, and a copy may be supplied to any person without infringement of copyright.

(2) In this section “public records” (公共紀錄) means the records of any nature or description which have been made, received or acquired in the course of proceedings of the Legislative Council, judicial proceedings or executive transaction, together with the exhibits and other material evidence which form part of or are annexed to or are otherwise related to any record, which are or are required to be in the custody of, or which may be transferred to or be acquired by, any department of the Government.

[*cf.* 1988 c. 48 s. 49 U.K.]

59. Acts done under statutory authority

(1) Where the doing of a particular act is specifically authorized by an Ordinance, whenever enacted, then, unless the Ordinance provides otherwise, the doing of that act does not infringe copyright.

(2) Nothing in this section is to be construed as excluding any defence of statutory authority otherwise available under or by virtue of any Ordinance.

[*cf.* 1988 c. 48 s. 50 U.K.]

(2) 凡某作品已為某目的傳達予政府，則政府可為該目的或為版權擁有人可合理預料的有關連目的，複製該作品或向公眾發放或提供該作品的複製品，而不屬侵犯該作品的版權。

(3) 如某作品先前已發表，但並非是憑藉本條發表的，則政府不得憑藉本條複製該作品或向公眾發放或提供該作品的複製品。

(4) 在第(1)款中，“公務”(public business)包括政府進行的任何活動。

(5) 本條在政府與版權擁有人訂立的協議的規限下具有效力。

[*比照* 1988 c. 48 s. 48 U.K.]

58. 公共紀錄

(1) 開放予公眾查閱的公共紀錄內的材料可予複製，其複製品亦可供應予任何人，而該項複製及供應並不屬侵犯版權。

(2) 在本條中，“公共紀錄”(public record)指在立法局程序、司法程序或行政事務的過程中製作、收到或取得的屬任何性質或類別的紀錄，並包括構成紀錄的一部分或附連於紀錄或在其他方面與紀錄有關連的證物和其他具關鍵性的證據，而該等紀錄是由任何政府部門或須由任何政府部門保管，或可能轉移給政府的任何部門或由其取得的。

[*比照* 1988 c. 48 s. 49 U.K.]

59. 根據法定權限所作出的作為

(1) 凡某條例(不論何時制定)明確授權作出某作為，則除非該條例另有規定，否則作出該作為不屬侵犯版權。

(2) 本條不得解釋為令任何可根據或憑藉任何條例而提出的法定權限免責辯護不得提出。

[*比照* 1988 c. 48 s. 50 U.K.]

Computer programs: Lawful users**電腦程式：合法使用者****60. Lawful user may make back-up copy of computer program**

(1) A lawful user of a copy of a computer program may make a back-up copy of the program without infringing the copyright in the program if it is necessary for him to have the back-up copy for the purposes of his lawful use.

(2) For the purposes of this section and section 61 a person is a lawful user of a computer program if he has a contractual right to use the program.

(3) This section has effect subject to any agreement to the contrary.

[*cf. 1988 c. 48 s. 50A U.K.*]

61. Lawful user may copy or adapt computer program

(1) A lawful user of a copy of a computer program may copy or adapt the program without infringing the copyright in the program if the copying or adapting is necessary for his lawful use.

(2) A lawful user of a copy of a computer program may, in particular, if it is necessary for the lawful use of the program, copy the program or adapt it for the purpose of correcting errors in it.

(3) This section does not apply to any copying or adapting permitted under section 60.

[*cf. 1988 c. 48 s. 50C U.K.*]

Typefaces**62. Use of typeface in ordinary course of printing**

(1) It is not an infringement of copyright in an artistic work consisting of the design of a typeface—

(a) to use the typeface in the ordinary course of typing, composing text, typesetting or printing;

(b) to possess an article for the purpose of such use; or

(c) to do anything in relation to material produced by such use,

and this is so notwithstanding that an article is used which is an infringing copy of the work.

(2) However, the following provisions of this Part apply in relation to persons making, importing, exporting or dealing with articles specifically designed or adapted for producing material in a particular typeface, or possessing such articles for the purpose of dealing with them, as if the production of material as mentioned in subsection (1) did infringe copyright in the artistic work consisting of the design of the typeface—

60. 合法使用者可製作電腦程式的後備複製品

(1) 電腦程式的複製品的合法使用者如需要該程式的後備複製品供作他的合法用途，可製作該程式的後備複製品，而不屬侵犯該程式的版權。

(2) 就本條及第 61 條而言，某人如有合約權利使用某電腦程式，該人即為該程式的合法使用者。

(3) 本條在任何與本條條文相反的協議的規限下具有效力。

[*比照 1988 c. 48 s. 50A U.K.*]

61. 合法使用者可複製或改編程式

(1) 如電腦程式的複製品的合法使用者為其合法用途所需而複製或改編該程式，則他進行該項複製或改編並不屬侵犯該程式的版權。

(2) 如為合法使用電腦程式而有此需要，該電腦程式的複製品的合法使用者尤可為更正該程式的錯誤所需而複製或改編該程式。

(3) 本條不適用於根據第 60 條而允許的任何複製或改編。

[*比照 1988 c. 48 s. 50C U.K.*]

字體**62. 在一般印刷過程中使用字體**

(1) 以下的作為並不屬侵犯由字體的設計所構成的藝術作品的版權——

(a) 在一般打字、作文、排版或印刷過程中使用該字體；

(b) 為該等用途而管有任何物品；或

(c) 就該等用途所產生的材料作出任何事情，

而儘管某物品屬該藝術作品的侵犯版權複製品，使用該物品亦不屬侵犯該藝術作品的版權。

(2) 然而，凡任何物品是經特定設計或改裝以產生以某種字體展現的材料，並且有人製作、輸入或輸出該等物品，或進行該等物品的交易，或為進行該等物品的交易而管有該等物品，則本部下列條文就該等人士而適用，猶如第 (1) 款提及的材料產生確有侵犯由字體的設計所構成的藝術作品的版權一樣——

section 32 (secondary infringement: making, importing, exporting, possessing or dealing with article for making infringing copy); section 109 (order for delivery up); and section 118(4) (offence of making or possessing such an article).

(3) The references in subsection (2) to “dealing with” an article are to selling, letting for hire, or offering or exposing for sale or hire, exhibiting in public, or distributing.

[*cf.* 1988 c. 48 s. 54 U.K.]

63. Articles for producing material in particular typeface

(1) This section applies to the copyright in an artistic work consisting of the design of a typeface where articles specifically designed or adapted for producing material in that typeface have been marketed by or with the licence of the copyright owner.

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

(3) In subsection (1) “marketed” (推出市場) means sold, let for hire or offered or exposed for sale or hire, in Hong Kong or elsewhere.

[*cf.* 1988 c. 48 s. 55 U.K.]

Works in electronic form

64. Transfers of copies of works in electronic form

(1) This section applies where a copy of a work in electronic form (other than such a copy which was made available to the public) has been purchased on terms which, expressly or impliedly or by virtue of any rule of law, allow the purchaser to copy the work, or to adapt it or make copies of an adaptation, in connection with his use of it.

(2) If there are no express terms—

- (a) prohibiting the transfer of the copy by the purchaser, imposing obligations which continue after a transfer, prohibiting the assignment of any licence or terminating any licence on a transfer; or
- (b) providing for the terms on which a transferee may do the things which the purchaser was permitted to do,

第 32 條 (間接侵犯版權：製作、輸入、輸出或管有用以製作侵犯版權複製品的物品，或進行該等物品的交易)；

第 109 條 (交付令)；及

第 118(4) 條 (製作或管有該等物品的罪行)。

(3) 在第 (2) 款中，凡提述“進行物品的交易”，即提述出售、出租、要約出售或要約出租、為出售或出租而展示有關物品、公開展覽或分發該有關物品。

[*比照* 1988 c. 48 s. 54 U.K.]

63. 產生以某種字體展現的材料的作品

(1) 凡任何物品是經特定設計或改裝以產生以某種字體展現的材料，而該字體的設計是構成藝術作品的，則該藝術作品的版權擁有人如已將該物品推出市場或該物品已在其特許下推出市場，本條即適用於該藝術作品的版權。

(2) 凡首批該等物品於某公曆年推出市場，則在自該年年終起計的 25 年期間完結後，任何人可藉進一步製作該等物品或為製作該等物品而作出任何事情以複製有關作品，亦可就如此製作的物品作出任何事情，而不屬侵犯該作品的版權。

(3) 在第 (1) 款中，“推出市場”(marketed) 指在香港或在其他地方出售、出租、要約出售或要約出租，或為出售或出租而展示。

[*比照* 1988 c. 48 s. 55 U.K.]

電子形式作品

64. 電子形式作品的複製品的轉移

(1) 凡有人購買電子形式作品的複製品 (已向公眾提供的複製品除外)，而按購買的條款 (不論是明訂的或是隱含的或是憑藉任何法律規則而有的條款)，是容許該購買者在與其使用該作品有關連的情況下複製該作品，或改編該作品，或製作改編本的複製品的，本條即適用。

(2) 如沒有明訂條款——

- (a) 禁止購買者將該複製品轉移、施加在轉移後仍繼續的義務、禁止轉讓任何特許，或規定特許在轉移時即告終止；或
- (b) 規定受讓人可在甚麼條款下作出購買者獲允許作出的事情，

anything which the purchaser was allowed to do may also be done without infringement of copyright by a transferee; but any copy, adaptation or copy of an adaptation made by the purchaser which is not also transferred is to be treated as an infringing copy for all purposes after the transfer.

(3) Subsection (2) also applies where the original purchased copy is no longer usable and what is transferred is a further copy used in its place.

(4) The above provisions also apply on a subsequent transfer, with the substitution for references in subsection (2) to the purchaser of references to the subsequent transferor.

[*cf. 1988 c. 48 s. 56 U.K.*]

65. Certain acts permitted where works made available to the public

Notwithstanding section 23, copyright in a work is not infringed by the making of a transient and incidental copy which is technically required for the viewing or listening of the work by a member of the public to whom a copy of the work is made available.

Miscellaneous: Literary, dramatic, musical and artistic works

66. Anonymous or pseudonymous works: acts permitted on assumptions as to expiry of copyright or death of author

(1) Copyright in a literary, dramatic, musical or artistic work is not infringed by an act done at a time when, or in pursuance of arrangements made at a time when—

- (a) it is not possible by reasonable inquiry to ascertain the identity of the author; and
- (b) it is reasonable to assume—
 - (i) that copyright has expired; or
 - (ii) that the author died 50 years or more before the beginning of the calendar year in which the act is done or the arrangements are made.

- (2) Subsection (1)(b)(ii) does not apply in relation to—
 - (a) a work in which Government copyright subsists; or
 - (b) a work in which copyright originally vested in an international organization by virtue of section 188 and in respect of which a regulation under that section specifies a copyright period longer than 50 years.

則凡屬購買者獲允許作出的事情，受讓人均可作出，而不屬侵犯版權；但購買者所製作的任何複製品、改編本或改編本的複製品，如沒有一併轉移，則在該項轉移後，該等複製品、改編本或改編本的複製品就任何目的而言均視為侵犯版權複製品。

(3) 凡原本購買的複製品已不能再用，而所轉移的是取代該複製品而使用的進一步複製品，則第(2)款亦適用。

(4) 上述條文亦適用於其後的轉移，但在第(2)款中提述購買者，須代以提述其後的出讓人。

[*比照 1988 c. 48 s. 56 U.K.*]

65. 因向公眾提供作品而允許作出的某些作為

凡某作品的複製品向公眾人士提供，而為讓該等公眾人士中任何人觀看或聆聽該作品而在技術上需要製作一項短暫存在和附帶的複製品，則儘管有第 23 條的規定，該項製作並不屬侵犯該作品的版權。

雜項：文學作品、戲劇作品、音樂作品及藝術作品

66. 不具名或以假名署名的作品：基於關於版權期限屆滿或作者死亡的假設而允許作出的作為

(1) 在以下情況發生時所作出的作為，或依據在以下情況發生時所作的安排而作出的作為，並不屬侵犯文學作品、戲劇作品、音樂作品或藝術作品的版權——

- (a) 不可能藉合理查究而確定有關作者的身分；及
- (b) 假設有以下情況屬合理——
 - (i) 版權期限已屆滿；或
 - (ii) 該作為或安排於某公曆年作出，而作者已於該年開始之時之前的 50 年期間開始之時或之前死亡的。

- (2) 第(1)(b)(ii)款並不就以下作品而適用——
 - (a) 有政府版權存在的作品；或
 - (b) 版權原先是憑藉第 188 條歸屬某國際組織的作品，且在該條之下的規例就該作品指明超逾 50 年的版權期限。

- (3) In relation to a work of joint authorship—
- (a) the reference in subsection (1) to its being not possible to ascertain the identity of the author is to be construed as a reference to its being not possible to ascertain the identity of all of the authors; and
 - (b) the reference in subsection (1)(b)(ii) to the author having died is to be construed as a reference to all the authors having died.
- [cf. 1988 c. 48 s. 57 U.K.]*

67. Use of notes or recordings of spoken words in certain cases

(1) Where a record of spoken words is made, in writing or otherwise, for the purpose of—

- (a) reporting current events; or
- (b) broadcasting or including in a cable programme service the whole or part of the work,

it is not an infringement of any copyright in the words as a literary work to use the record or material taken from it (or to copy the record, or any such material, and use the copy) for that purpose, if the conditions in subsection (2) are met.

- (2) The conditions are that—
- (a) the record is a direct record of the spoken words and is not taken from a previous record or from a broadcast or cable programme;
 - (b) the making of the record was not prohibited by the speaker and, where copyright already subsisted in the work, did not infringe copyright;
 - (c) the use made of the record or material taken from it is not of a kind prohibited by or on behalf of the speaker or copyright owner before the record was made; and
 - (d) the use is by or with the authority of a person who is lawfully in possession of the record.

[cf. 1988 c. 48 s. 58 U.K.]

68. Public reading or recitation

(1) The reading or recitation in public by one person of a reasonable extract from a published literary or dramatic work does not infringe any copyright in the work if it is accompanied by a sufficient acknowledgement.

- (3) 就合作作品而言——
- (a) 在第(1)款中提述不可能確定作者的身分，須解釋為提述不可能確定所有作者的身分；及
 - (b) 在第(1)(b)(ii)款中提述作者已死亡，須解釋為提述所有作者已死亡。
- [比照 1988 c. 48 s. 57 U.K.]*

67. 在某些情況下使用講出的文字的筆記或紀錄

(1) 凡為下列目的藉書面或其他形式製作講出的文字的紀錄——

- (a) 報導時事；或
- (b) 廣播作品的整項或其部分，或將作品的整項或其部分包括在有線傳播節目服務內，

則如第(2)款所述條件獲符合，使用該紀錄或取自該紀錄的材料(或複製該紀錄或任何該等材料並使用該複製品)作上述用途，並不屬侵犯該等作為文學作品的文字的版權。

- (2) 有關的條件為——
- (a) 該紀錄是該等講出的文字的直接紀錄，而非取自以前的紀錄或取自廣播或有線傳播節目；
 - (b) 有關講者不禁止製作該紀錄，而如該作品已有版權存在，則製作該紀錄並不屬侵犯該版權；
 - (c) 將該紀錄或取自該紀錄的材料作有關使用，並非屬在該紀錄製作前由或代表有關講者或版權擁有人所禁止的使用類別；及
 - (d) 由合法管有該紀錄的人或在其授權下作有關使用。

[比照 1988 c. 48 s. 58 U.K.]

68. 公開誦讀或背誦

(1) 由一個人公開誦讀或背誦已發表的文學作品或戲劇作品的合理摘錄，只要附有足夠的確認聲明，即不屬侵犯該作品的任何版權。

(2) Copyright in a work is not infringed by the making of a sound recording, or the broadcasting or inclusion in a cable programme service, of a reading or recitation which by virtue of subsection (1) does not infringe copyright in the work, if the recording, broadcast or cable programme consists mainly of material in relation to which it is not necessary to rely on that subsection.

[*cf.* 1988 c. 48 s. 59 U.K.]

69. Abstracts of scientific or technical articles

(1) Where an article on a scientific or technical subject is published in a periodical accompanied by an abstract indicating the contents of the article, it is not an infringement of copyright in the abstract, or in the article, to copy the abstract or issue or make available copies of it to the public. [*cf.* 1988 c. 48 s. 60(1) U.K.]

(2) This section does not apply if, or to the extent that, licences under licensing schemes are available authorizing the act in question and the person so acting knew or ought to have been aware of that fact.

70. Recordings of folksongs

(1) A sound recording of a performance of a song may be made for the purpose of including it in an archive maintained by a body designated under subsection (4)(b) without infringing any copyright in the words as a literary work or in the accompanying musical work, if the conditions in subsection (2) below are met.

(2) The conditions are that—

- (a) the words are unpublished and of unknown authorship at the time the recording is made;
- (b) the making of the recording does not infringe any other copyright; and
- (c) its making is not prohibited by any performer.

(3) Copies of a sound recording made in reliance on subsection (1) and included in an archive maintained by a body designated under subsection (4)(b) may, if the conditions prescribed under subsection (4)(a) are met, be made and supplied by the archivist without infringing copyright in the recording or the works included in it.

(4) The Secretary for Trade and Industry may for the purposes of this section by regulation—

- (a) prescribe conditions; and
- (b) designate bodies, and he shall not designate a body unless he is satisfied that the body is not established or conducted for profit.

(5) The conditions prescribed under subsection (4)(a) must include—

(2) 凡誦讀或背誦憑藉第(1)款並不屬侵犯有關作品的版權，則將該誦讀或背誦製成聲音紀錄或予以廣播或包括在有線傳播節目服務內，並不屬侵犯該作品的版權，但構成該聲音紀錄、廣播或有線傳播節目的材料，須主要是無需就其而依賴第(1)款者。

[*比照* 1988 c. 48 s. 59 U.K.]

69. 科學或技術文章的撮錄

(1) 凡與科學或技術課題有關的文章在期刊上發表，並附有顯示該文章內容的撮錄，則複製該撮錄或向公眾發放或提供該撮錄的複製品，並不屬侵犯該撮錄或該文章的版權。 [*比照* 1988 c. 48 s. 60(1) U.K.]

(2) 如有特許計劃下的特許授權作出有關的作為，而如此作出有關的作為的人已知道或應已知道該事實，則本條並不適用，或在該特許授權作出有關的作為的範圍內不適用。

70. 民歌的紀錄

(1) 凡為了將歌曲表演的聲音紀錄包括在根據第(4)(b)款而獲指定的機構設置的檔案室內，而將歌曲的表演製作成聲音紀錄，則如第(2)款所列條件獲符合，該項製作並不屬侵犯作為文學作品的有關歌詞的版權，亦不屬侵犯伴奏的音樂作品的版權。

(2) 有關的條件為——

- (a) 在製作有關紀錄時該等歌詞未曾發表並屬作者不為人知；
- (b) 有關紀錄的製作不屬侵犯任何其他版權；及
- (c) 有關紀錄的製作未為任何表演者禁止。

(3) 如根據第(4)(a)款訂明的條件獲符合，則依據第(1)款而製作並包括在根據第(4)(b)款而獲指定的機構設置的檔案室內的聲音紀錄，可由檔案室負責人複製和供應予他人，而不屬侵犯該聲音紀錄的版權或包括在該紀錄內的作品版權。

(4) 工商司可為施行本條而藉規例——

- (a) 訂明某些條件；及
- (b) 指定任何機構，而工商司除非信納某機構並非為牟利而設立或經營，否則不得指定該機構。

(5) 根據第(4)(a)款訂明的條件必須包括以下規定——

- (a) that copies are only supplied to persons satisfying the archivist that they require them for the purposes of research or private study and will not use them for any other purpose; and
- (b) that no person is furnished with more than one copy of the same recording.

(6) In this section, references to the archivist include a person acting on his behalf.

[cf. 1988 c. 48 s. 61 U.K.]

71. Representation of certain artistic works on public display

- (1) This section applies to—
 - (a) buildings; and
 - (b) sculptures, models for buildings and works of artistic craftsmanship, if permanently situated in a public place or in premises open to the public.
- (2) The copyright in such a work is not infringed by—
 - (a) making a graphic work representing it;
 - (b) making a photograph or film of it; or
 - (c) broadcasting or including in a cable programme service a visual image of it.

(3) Nor is the copyright infringed by the issue or making available to the public of copies, or the broadcasting or inclusion in a cable programme service, of anything whose making was, by virtue of this section, not an infringement of the copyright.

[cf. 1988 c. 48 s. 62 U.K.]

72. Advertisement of sale of artistic work

(1) It is not an infringement of copyright in an artistic work to copy it, or to issue or make available copies to the public, for the purpose of advertising the sale of the work.

(2) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with, the copy is treated as an infringing copy for the purposes of that dealing if that dealing infringes copyright for all subsequent purposes.

For this purpose “dealt with” (進行交易) means sold or let for hire, offered or exposed for sale or hire, exhibited in public or distributed.

[cf. 1988 c. 48 s. 63 U.K.]

- (a) 要求獲得複製品的人，須令檔案室負責人信納他是為研究或私人研習的目的而需要該等複製品，並且不會為其他目的而使用該等複製品，方可獲供應該等複製品；及
 - (b) 不得提供同一聲音紀錄的複製品多於一份予同一人。
- (6) 在本條中，凡提述檔案室負責人，包括代其行事的人。

[比照 1988 c. 48 s. 61 U.K.]

71. 某些公開展示的藝術作品的表述

- (1) 本條適用於——
 - (a) 建築物；及
 - (b) 永久位於公眾地方或開放予公眾的處所的雕塑品、建築物的模型及美術工藝作品。
- (2) 下列各項並不屬侵犯該等作品的版權——
 - (a) 製作表述該等作品的平面美術作品；
 - (b) 為該等作品拍照或攝製影片；或
 - (c) 廣播該等作品的影像或將該等作品的影像包括在有線傳播節目服務內。
- (3) 凡任何東西的製作憑藉本條並不屬侵犯版權，則向公眾發放或提供該物品的複製品、廣播該物品或將該物品包括在有線傳播節目服務內，亦不屬侵犯該版權。

[比照 1988 c. 48 s. 62 U.K.]

72. 售賣藝術作品的宣傳

(1) 為宣傳藝術作品供售賣而複製該作品或向公眾發放或提供該複製品，並不屬侵犯該作品的版權。

(2) 凡任何複製品(假使非因本條該複製品即屬侵犯版權複製品)按照本條製作，但其後有人進行該複製品的交易，則就該項交易而言，該複製品須視為侵犯版權複製品，又如該項交易侵犯版權，則就所有其後的目的而言，該複製品須視為侵犯版權複製品。

就本款而言，“進行交易”(dealt with)指出售、出租、要約出售或要約出租、公開展覽或分發，或為出售或出租而展示。

[比照 1988 c. 48 s. 63 U.K.]

73. Making of subsequent works by same artist

Where the author of an artistic work is not the copyright owner, he does not infringe the copyright by copying the work in making another artistic work if he does not repeat or imitate the main design of the earlier work.

[*cf. 1988 c. 48 s. 64 U.K.*]

74. Reconstruction of buildings

Anything done for the purposes of reconstructing a building does not infringe any copyright—

- (a) in the building; or
- (b) in any drawings or plans in accordance with which the building was, by or with the licence of the copyright owner, constructed.

[*cf. 1988 c. 48 s. 65 U.K.*]

Miscellaneous: Films and sound recordings**75. Films: acts permitted on assumptions as to expiry of copyright, etc.**

(1) Copyright in a film is not infringed by an act done at a time when, or in pursuance of arrangements made at a time when—

- (a) it is not possible by reasonable inquiry to ascertain the identity of any of the persons referred to in section 19(2)(a) to (d) (persons by reference to whose life the copyright period is ascertained); and
- (b) it is reasonable to assume—
 - (i) that copyright has expired; or
 - (ii) that the last to die of those persons died 50 years or more before the beginning of the calendar year in which the act is done or the arrangements are made.

(2) Subsection (1)(b)(ii) does not apply in relation to—

- (a) a film in which Government copyright subsists; or
- (b) a film in which copyright originally vested in an international organization by virtue of section 188 and in respect of which a regulation under that section specifies a copyright period longer than 50 years.

[*cf. 1988 c. 48 s. 66A U.K.*]

73. 同一藝術家製作其後的作品

凡某一藝術作品的作者並非該作品的版權擁有人，如他在製作另一藝術作品時複製該先前作品，則該作者如並非重覆或模仿該先前作品的主要設計，該項複製並不屬侵犯該先前作品的版權。

[*比照 1988 c. 48 s. 64 U.K.*]

74. 重建建築物

為重建某建築物的目的而作出的任何事情，不屬侵犯下列版權——

- (a) 該建築物的版權；或
- (b) 建造該建築物所按照的繪圖或圖則的版權（該建築物由該繪圖或圖則的版權擁有人建造或在其特許下建造）。

[*比照 1988 c. 48 s. 65 U.K.*]

雜項：影片及聲音紀錄**75. 影片：基於關於版權期限屆滿等的假設而允許作出的作為**

(1) 在以下情況發生時作出的作為，或依據在以下情況發生時所作的安排而作出的作為，並不屬侵犯影片的版權——

- (a) 不可能藉合理查究而確定任何第 19(2)(a) 至 (d) 條所提述的人士（版權期限是參照該等人士的壽命而確定的）的身分；及
- (b) 假設有以下情況屬合理——
 - (i) 版權期限已屆滿；或
 - (ii) 該作為或安排於某公曆年作出，而該等人士中最後死亡的人是在該年開始之時之前的 50 年期間開始之時或之前死亡的。

(2) 第 (1)(b)(ii) 款並不就以下影片而適用——

- (a) 有政府版權存在的影片；或
- (b) 版權原先是憑藉第 188 條歸屬某國際組織的影片，且根據該條訂立的規例就該等影片指明超逾 50 年的版權期限。

[*比照 1988 c. 48 s. 66A U.K.*]

76. Performance, showing or playing of works for purposes of club, society, etc.

(1) It is not an infringement of the copyright in a work (other than a broadcast or a cable programme) to perform, show or play it as part of the activities of, or for the benefit of, a club, society or other organization if the following conditions are met.

(2) The conditions are—

- (a) that the club, society or organization is not established or conducted for profit and its main objects are charitable or are otherwise concerned with the advancement of religion, education or social welfare; and
- (b) that the proceeds of any charge for admission to the place where the work is to be performed, shown or played are applied solely for the purposes of the club, society or organization.

[*cf. 1988 c. 48 s. 67 U.K.*]

Miscellaneous: Broadcasts and cable programmes

77. Incidental recording for purposes of broadcast or cable programme

(1) This section applies where by virtue of a licence or assignment of copyright a person is authorized to broadcast or include in a cable programme service—

- (a) a literary, dramatic or musical work, or an adaptation of such a work;
- (b) an artistic work; or
- (c) a sound recording or film.

(2) He is by virtue of this section to be treated as licensed by the owner of the copyright in the work to do or authorize any of the following for the purposes of the broadcast or cable programme—

- (a) in the case of a literary, dramatic or musical work, or an adaptation of such a work, to make a sound recording or film of the work or adaptation;
- (b) in the case of an artistic work, to take a photograph or make a film of the work;
- (c) in the case of a sound recording or film, to make a copy of it.

(3) That licence is subject to the condition that the sound recording, film, photograph or copy in question—

- (a) must not be used for any other purposes;

76. 表演、放映或展示或播放作品

(1) 凡作為某會社、社團或其他組織的活動的一部分或為該會社、社團或其他組織的利益而表演、放映或展示或播放作品（廣播或有線傳播節目除外），並符合以下條件，則不屬侵犯該作品的版權。

(2) 有關的條件為——

- (a) 該會社、社團或組織並非為牟利而成立或經營，而其主要宗旨屬慈善性質，或是關於宣揚宗教，或推廣教育或社會福利的；及
- (b) 表演、放映或展示或播放該作品的地方的入場費的收益，純粹是運用於該會社、社團或組織的目的。

[*比照 1988 c. 48 s. 67 U.K.*]

雜項：廣播及有線傳播節目

77. 為廣播或有線傳播節目而附帶製作紀錄

(1) 如某人憑藉版權特許或版權轉讓而獲授權廣播——

- (a) 文學作品、戲劇作品或音樂作品或該等作品的改編本；
- (b) 藝術作品；或
- (c) 聲音紀錄或影片，

或將其包括在有線傳播節目服務內，本條即適用。

(2) 該人憑藉本條須視為獲得作品的版權的擁有人特許，可為該廣播或有線傳播節目的目的而作出或授權他人作出以下事情——

- (a) 就文學作品、戲劇作品或音樂作品或該等作品的改編本而言，將該作品或改編本製成聲音紀錄或影片；
- (b) 就藝術作品而言，為該作品拍照或攝製影片；
- (c) 就聲音紀錄或影片而言，製作該作品的複製品。

(3) 該項特許受以下條件規限——

- (a) 有關的聲音紀錄、影片、照片或複製品不得用作任何其他用途；

(b) must be destroyed within 3 months of being first used for broadcasting the work or, as the case may be, including it in a cable programme service.

(4) A sound recording, film, photograph or copy made in accordance with this section is treated as an infringing copy—

- (a) for the purposes of any use in breach of the condition mentioned in subsection (3)(a); and
- (b) for all purposes after that condition or the condition mentioned in subsection (3)(b) is broken.

[*cf.* 1988 c. 48 s. 68 U.K.]

78. Recording for purposes of supervision and control of broadcasts and cable programmes

(1) Copyright is not infringed by the making or use by Radio Television Hong Kong, for the purposes of maintaining supervision and control over programmes broadcast by them, of recordings of those programmes.

(2) Copyright is not infringed by the making or use of recordings—

- (a) by the Broadcasting Authority for the performance of its functions mentioned in section 9 of the Broadcasting Authority Ordinance (Cap. 391); or
- (b) pursuant to the instructions of the Broadcasting Authority in the performance of those functions.

[*cf.* 1988 c. 48 s. 69 U.K.]

79. Recording for purposes of time-shifting

The making for private and domestic use of a recording of a broadcast or cable programme solely for the purpose of enabling it to be viewed or listened to at a more convenient time does not infringe any copyright in the broadcast or cable programme or in any work included in it.

[*cf.* 1988 c. 48 s. 70 U.K.]

80. Photographs of television broadcasts or cable programmes

The making for private and domestic use of a photograph of the whole or any part of an image forming part of a television broadcast or cable programme, or a copy of such a photograph, does not infringe any copyright in the broadcast or cable programme or in any film included in it.

[*cf.* 1988 c. 48 s. 71 U.K.]

(b) 在自有關的聲音紀錄、影片、照片或複製品首次用作廣播或將其包括在有線傳播節目服務內(視屬何情況而定)起計的3個月內,必須將該聲音紀錄、影片、照片或複製品銷毀。

(4) 按照本條製作的聲音紀錄、影片、照片或複製品——

- (a) 就於違反第(3)(a)款提及的條件的情況下使用而言,須視為侵犯版權複製品;及
- (b) 在該條件或第(3)(b)款提及的條件遭違反後,就所有目的而言,須視為侵犯版權複製品。

[*比照* 1988 c. 48 s. 68 U.K.]

78. 為監管和控制廣播及有線傳播節目而製作紀錄

(1) 香港電台為維持監管和控制其廣播的節目而將節目製作成紀錄,或使用該等紀錄,並不屬侵犯版權。

(2) 以下製作或使用紀錄並不屬侵犯版權——

- (a) 廣播事務管理局為執行《廣播事務管理局條例》(第391章)第9條提及的該局的職能而製作或使用紀錄;或
- (b) 依據廣播事務管理局的指示履行該等職能而製作或使用紀錄。

[*比照* 1988 c. 48 s. 69 U.K.]

79. 為遷就時間而製作紀錄

純粹為可在一個較方便的時間觀看或聆聽廣播或有線傳播節目的目的,而製作該廣播或有線傳播節目的紀錄供私人 and 家居使用,並不屬侵犯該廣播或有線傳播節目或其所包括的作品的版權。

[*比照* 1988 c. 48 s. 70 U.K.]

80. 電視廣播或有線傳播節目的照片

將構成電視廣播或有線傳播節目的一部分的影像的全部或部分拍成照片,或製作該等照片的複製品,供私人 and 家居使用,並不屬侵犯該廣播或有線傳播節目或其所包括的任何影片的版權。

[*比照* 1988 c. 48 s. 71 U.K.]

81. Free public showing or playing of broadcast or cable programme

(1) The showing or playing in public of a broadcast or cable programme (other than an encrypted broadcast or cable programme) to an audience who have not paid for admission to the place where the broadcast or programme is to be seen or heard does not infringe any copyright in—

- (a) the broadcast or cable programme; or
- (b) any sound recording or film included in it.

(2) The audience are treated as having paid for admission to a place—

- (a) if they have paid for admission to a place of which that place forms part; or
- (b) if goods or services are supplied at that place (or a place of which it forms part)—
 - (i) at prices which are substantially attributable to the facilities afforded for seeing or hearing the broadcast or programme; or
 - (ii) at prices exceeding those usually charged there and which are partly attributable to those facilities.

(3) The following are not regarded as having paid for admission to a place—

- (a) persons admitted as residents or inmates of the place which is operated by a charitable organization and the facilities therein are not provided for profit;
- (b) persons admitted as members of a club or society whose main objects are charitable or are otherwise concerned with the advancement of religion, education or social welfare and where the payment is only for membership of the club or society and the provision of facilities for seeing or hearing broadcasts or programmes is only incidental to the main purposes of the club or society.

(4) Where the making of the broadcast or inclusion of the programme in a cable programme service was an infringement of the copyright in a sound recording or film, the fact that it was heard or seen in public by the reception of the broadcast or programme is to be taken into account in assessing the damages for that infringement.

[*cf.* 1988 c. 48 s. 72 U.K.]

81. 免費公開放映或播放廣播或有線傳播節目

(1) 如向任何觀眾或聽眾公開放映或播放任何廣播或有線傳播節目(不包括經編碼處理的廣播或有線傳播節目),而該等觀眾或聽眾並沒有支付進入某地方觀看或聆聽該廣播或有線傳播節目的入場費,則該項放映或播放並不屬侵犯——

- (a) 該項廣播或有線傳播節目的版權;或
- (b) 包括在其內的聲音紀錄或影片的版權。

(2) 如有以下情況,觀眾或聽眾可視為已支付進入某地方觀看或聆聽廣播或有線傳播節目的入場費——

- (a) 該等觀眾或聽眾已支付進入某一地方的入場費,而觀看或聆聽廣播或有線傳播節目的地方構成該某一地方的一部分;或
- (b) 在該地方(或觀看或聆聽廣播或有線傳播節目的地方構成其一部分的地方)有貨品供應或服務提供,而該貨品或服務的價格——
 - (i) 實質上可歸因於提供觀看或聆聽該廣播或節目的設施;或
 - (ii) 高於通常在該地方收取的價格,並且可部分歸因於上述設施。

(3) 凡——

- (a) 某一地方是由慈善組織營辦的,而在其內提供設施並非為牟利的,則以該地方的居民或住客身分入場的人並不視為已支付進入該某一地方觀看或聆聽廣播或有線傳播節目的入場費;
- (b) 某會社或社團的主要宗旨屬慈善性質,而所支付的費用只是該會社或社團的會籍費用,且提供觀看或聆聽有關廣播或有線傳播節目的設施,亦只是為該會社或社團的主要目的而附帶地提供的,則以該會社或社團的會員身分入場的人,並不視為已支付進入某地方觀看或聆聽該廣播或節目的入場費。

(4) 凡作出該項廣播或將該節目包括在有線傳播節目服務內屬侵犯聲音紀錄或影片的版權,則在評估該項侵犯版權行為的損害賠償時,藉接收該項廣播或節目而使公眾聆聽或觀看該聲音紀錄或影片這一事實須列為考慮因素。

[*比照* 1988 c. 48 s. 72 U.K.]

82. Reception and re-transmission of broadcast in cable programme service

(1) The copyright in a television broadcast or a sound broadcast is not infringed by any person who, by the reception and immediate re-transmission of the broadcast without any alteration, includes a programme in a service provided—

- (a) by a communal aerial broadcast distribution system within the scope of section 8(4)(e) of the Telecommunication Ordinance (Cap. 106);
- (b) by an interconnection between a communal aerial broadcast distribution system within the scope of section 8(4)(e) of the Telecommunication Ordinance (Cap. 106) and a subscription television network licensed under the Television Ordinance (Cap. 52), where the re-transmission is for the reception of the users of the communal aerial broadcast distribution system; or
- (c) by a system licensed under a broadcast relay station licence issued under the Telecommunication Regulations (Cap. 106 sub. leg.).

(2) The copyright in a television broadcast which is not encrypted or in a sound broadcast which is not encrypted is not infringed by any person who, by the reception and immediate re-transmission of the broadcast without any alteration, includes a programme in a service provided—

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

until the expiration of 6 months beginning on the day of publication of the notice in accordance with subsection (5).

(3) Where a television broadcast or sound broadcast is made or uplinked from a place in Hong Kong or elsewhere, and the broadcast is a lawful broadcast, then any person who, by the reception and immediate re-transmission of the broadcast without any alteration, includes a programme in a service provided by a system or an interconnection specified in subsection (1) or (2), being a programme comprising a literary, dramatic or musical work, or an adaptation of such a work, or an artistic work, or a sound recording or film, shall be in a like position, in any proceedings for infringement of the

82. 接收和再傳送有線傳播節目服務的廣播

(1) 任何人均不會因藉接收和即時再傳送沒有作出更改的電視或聲音廣播而將任何節目包括在由以下系統或互相連接所提供的服務內，而侵犯該等廣播的版權——

- (a) 在《電訊條例》(第 106 章) 第 8(4)(e) 條所指範圍內的公共天線廣播分配系統；
- (b) 在《電訊條例》(第 106 章) 第 8(4)(e) 條所指範圍內的公共天線廣播分配系統與根據《電視條例》(第 52 章) 領有牌照的收費電視網絡之間的互相連接，而該項再傳送的目的是供公共天線廣播分配系統的用戶接收；或
- (c) 領有根據《電訊規例》(第 106 章，附屬法例) 發出的廣播傳播站牌照的系統。

(2) 任何人均不會因藉接收和即時再傳送沒有作出更改的沒有經編碼處理的電視廣播或沒有經編碼處理的聲音廣播而將任何節目包括在由以下系統或互相連接所提供的服務內，而侵犯該等廣播的版權——

- (a) 領有根據《電訊規例》(第 106 章，附屬法例) 發出的衛星電視共用天線牌照的系統；或
- (b) 在領有根據《電訊規例》(第 106 章，附屬法例) 發出的衛星電視共用天線牌照的系統與根據《電視條例》(第 52 章) 領有牌照的收費電視網絡之間的互相連接，而該項再傳送的目的是供衛星電視共用天線系統的用戶接收，

直至自按照第 (5) 款刊登通知當日起計的 6 個月屆滿為止。

(3) 凡某電視廣播或聲音廣播從香港或其他地方某地方作出或作向上傳輸，而該廣播乃合法的廣播，則任何人因藉接收和即時再傳送沒有作出更改的該廣播而將任何節目(該節目須屬包含文學作品、戲劇作品或音樂作品或該等作品的改編本，或藝術作品，或聲音紀錄或影片者)包括在藉第 (1) 或 (2) 款所指明的系統或互相連接所提供

copyright (if any) in the work, recording or film, as if he had been the holder of a licence granted by the owner of that copyright to include the work, adaptation, recording or film in any programme so included in that service.

(4) Where a television broadcast or a sound broadcast is not encrypted, the person who, by the reception and immediate re-transmission of the broadcast without any alteration, includes a programme in a service provided by a system or interconnection specified in subsection (2) is deemed to have been granted an implied licence by the maker of the broadcast to receive and re-transmit the broadcast using the system which is only revocable by notice given in accordance with subsection (5).

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

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

[*cf.* 1988 c. 48 s. 73 U.K.]

83. Provision of sub-titled copies of broadcast or cable programme

(1) A body designated under subsection (3) may, for the purpose of providing people who are deaf or hard of hearing, or physically or mentally handicapped in other ways, with copies which are sub-titled or otherwise modified for their special needs, make copies of television broadcasts or cable programmes and issue and make available copies to the public, without infringing any copyright in the broadcasts or cable programmes or works included in them.

(2) This section does not apply if, or to the extent that, licences under licensing schemes are available authorizing the act in question and the person so acting knew or ought to have been aware of that fact.

(3) The Secretary for Trade and Industry may, by notice in the Gazette, designate bodies for the purposes of this section, and the Secretary shall not designate a body unless he is satisfied that it is not established or conducted for profit.

[*cf.* 1988 c. 48 s. 74 U.K.]

84. Recording for archival purposes

(1) A recording of a broadcast or cable programme of a class designated under subsection (2), or a copy of such a recording, may be made for the purpose of being placed in an archive maintained by a body designated under subsection (2) without thereby infringing any copyright in the broadcast or cable programme or in any work included in it.

的服務內，則該人在任何關於侵犯該等作品、紀錄或影片的版權(如有的話)的法律程序中的地位，猶如其為由版權擁有人批出的將該等作品、改編本、紀錄或影片包括在任何已如此包括在該服務內的節目的特許的持有人一樣。

(4) 凡某電視廣播或聲音廣播沒有經編碼處理，則任何人如藉接收和即時再傳送沒有作出更改的該廣播而將節目包括在藉第(2)款所指明的系統或互相連接所提供的服務內，該人即當作已獲該廣播的製作者批給隱含特許以使用該系統接收和再傳送該廣播，而該隱含特許只可藉按照第(5)款給予的通知撤銷。

(5) 根據第(4)款當作已批出特許的廣播的製作者可在——

- (a) 一份行銷於香港的中文報章；及
- (b) 一份行銷於香港的英文報章，

刊登撤銷通知而撤銷該特許。

[*比照* 1988 c. 48 s. 73 U.K.]

83. 提供附有字幕的廣播或有線傳播節目的複製品

(1) 為了將附有字幕或在其他方面經變通以切合失聰或聽覺有問題的人或身體上或精神上有其他方面殘障的人的特殊需要的電視廣播或有線傳播節目的複製品提供予該等人士，根據第(3)款而指定的任何機構均可製作該等複製品並向公眾發放及提供該等複製品，而不屬侵犯該等廣播或有線傳播節目或其所包括的作品的版權。

(2) 如有特許計劃下的特許授權作出有關的作為，而如此作出有關的作為的人已知或應已知該事實，則本條並不適用，或在該特許授權作出有關的作為的範圍內適用。

(3) 工商司可為施行本條而藉憲報公告指定任何機構，而工商司除非信納某機構並非為牟利而設立或經營，否則不得指定該機構。

[*比照* 1988 c. 48 s. 74 U.K.]

84. 為存檔而製作的紀錄

(1) 任何人都可為了將屬根據第(2)款而指定的種類的廣播或有線傳播節目的紀錄或其複製品放在根據第(2)款而獲指定的機構設置的檔案室內，而製作該紀錄或其複製品，而不屬侵犯該廣播或有線傳播節目或其所包括的作品的版權。

(2) The Secretary for Trade and Industry may, by notice in the Gazette, designate any class of broadcast or of cable programme and any body for the purposes of this section, and the Secretary shall not designate a body unless he is satisfied that it is not established or conducted for profit.

[*cf. 1988 c. 48 s. 75 U.K.*]

Adaptations

85. Adaptations

An act which by virtue of this Division may be done without infringing copyright in a literary, dramatic or musical work does not, where that work is an adaptation, infringe any copyright in the work from which the adaptation was made.

[*cf. 1988 c. 48 s. 76 U.K.*]

Designs

86. Corresponding design

In sections 87 and 88, a “corresponding design” (相應外觀設計), in relation to an artistic work, means a design within the meaning of the Registered Designs Ordinance (64 of 1997) which if applied to an article would produce something which would be treated for the purposes of this Part as a copy of the artistic work.

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

87. Effect of exploitation of design derived from artistic work

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

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

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

(2) 工商司可為施行本條而藉憲報公告指定某種類的廣播或有線傳播節目，及藉憲報公告指定任何機構，而工商司除非信納某機構並非為牟利而成立或經營，否則不得指定該機構。

[*比照 1988 c. 48 s. 75 U.K.*]

改編本

85. 改編本

凡任何作為憑藉本分部可作出而不屬侵犯文學作品、戲劇作品或音樂作品的版權，則在該作品是改編自另一作品的改編本的情況下，該作為亦不屬侵犯該另一作品的版權。

[*比照 1988 c. 48 s. 76 U.K.*]

外觀設計

86. 相應外觀設計

在第 87 及 88 條中，“相應外觀設計” (corresponding design)，就一項藝術作品而言，指《註冊外觀設計條例》(1997 年第 64 號) 所指的外觀設計，而該外觀設計如應用於某物品，即會產生就本部而言會被視為該藝術作品的複製品的東西。

[*比照 1988 c. 48 s. 53(2) U.K.*]

87. 利用從藝術作品衍生的外觀設計的效力

(1) 如版權擁有人或在版權擁有人的特許下藉以下方式利用藝術作品，本條即適用——

- (a) 藉工業程序而製造就本部而言被視為該作品的複製品的物品；及
- (b) 在香港或其他地方將該等物品推出市場。

(2) 凡包含經註冊的相應外觀設計的該等物品於某公曆年首次推出市場，則在自該年年終起計的 25 年期間完結後，該項作品可藉製作任何類別的物品而複製，或藉為製作任何類別的物品而作出的事情而複製，並可就如此製作的物品作出任何事情，而不屬侵犯該作品的版權。

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

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

(5) In this section—

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

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

88. Things done in reliance on registration of design

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

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

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

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

(3) 凡包含未經註冊的相應外觀設計的該等物品於某公曆年首次推出市場，則在自該年年終起計的 15 年期間完結後，該項作品可藉製作任何類別的物品而複製，或藉為製作任何類別的物品而作出的事情而複製，並可就如此製作的物品作出任何事情，而不屬侵犯該作品的版權。

(4) 如藝術作品只有部分如第 (1) 款所提及般被利用，則第 (2) 或 (3) 款只就該部分而適用。

(5) 在本條中——

- (a) “經註冊的相應外觀設計” (registered corresponding design) 指已根據《註冊外觀設計條例》(1997 年第 64 號) 註冊的相應外觀設計；
- (b) “未經註冊的相應外觀設計” (unregistered corresponding design) 指未有根據《註冊外觀設計條例》(1997 年第 64 號) 註冊的相應外觀設計，並包括根據該條例不屬可予註冊的相應外觀設計；
- (c) 對物品的提述不包括影片；
- (d) 對將任何物品推出市場的提述，即對出售、出租、要約出售或要約出租，或為出售或出租而展示該物品的提述。

[比照 1988 c. 48 s. 52 U.K.]

88. 依據外觀設計的註冊而作出的事情

在以下情況下作出任何事情，均不屬侵犯藝術作品的版權——

- (a) 依據一項轉讓或特許而作出任何事情，而該轉讓或特許是由根據《註冊外觀設計條例》(1997 年第 64 號) 註冊為相應外觀設計的註冊擁有人的人作出或批出的；及
 - (b) 真誠地依據有關註冊並且在不知悉有任何關於取消該項註冊或糾正外觀設計註冊紀錄冊內有關記項的法律程序的情況下作出該事情，
- 而即使註冊為註冊擁有人的人並不是就該條例而言的外觀設計擁有人，上述條文仍然適用。

[比照 1988 c. 48 s. 53(1) U.K.]

DIVISION IV

MORAL RIGHTS

Right to be identified as author or director

89. Right to be identified as author or director

(1) The author of a copyright literary, dramatic, musical or artistic work, and the director of a copyright film, has the right to be identified as the author or director of the work in the circumstances mentioned in this section; but the right is not infringed unless it has been asserted in accordance with section 90.

(2) The author of a literary work (other than words intended to be sung or spoken with music) or a dramatic work has the right to be identified whenever—

- (a) the work is published commercially, performed in public, broadcast or included in a cable programme service; or
- (b) copies of a film or sound recording including the work are issued or made available to the public,

and that right includes the right to be identified whenever any of those events occur in relation to an adaptation of the work as the author of the work from which the adaptation was made.

(3) The author of a musical work, or a literary work consisting of words intended to be sung or spoken with music, has the right to be identified whenever—

- (a) the work is published commercially, performed in public, broadcast or included in a cable programme service;
- (b) copies of a sound recording of the work are issued or made available to the public; or
- (c) a film of which the sound-track includes the work is shown in public or copies of such a film are issued or made available to the public,

and that right includes the right to be identified whenever any of those events occur in relation to an adaptation of the work as the author of the work from which the adaptation was made.

(4) The author of an artistic work has the right to be identified whenever—

- (a) the work is published commercially or exhibited in public, or a visual image of it is broadcast or included in a cable programme service;
- (b) a film including a visual image of the work is shown in public or copies of such a film are issued or made available to the public; or

第IV分部

精神權利

被識別為作者或導演的權利

89. 被識別為作者或導演的權利

(1) 具有版權的文學作品、戲劇作品、音樂作品或藝術作品的作者以及具有版權的影片的導演，在本條提及的情況下具有被識別為作品的作者或導演的權利；但除非該權利已按照第90條體現，否則該權利並未遭侵犯。

(2) 凡有文學作品（但擬在音樂伴隨下唱出或講出的文字則除外）或戲劇作品——

- (a) 作商業發表、公開表演、廣播或包括在有線傳播節目服務內；或
- (b) 包括在影片或聲音紀錄中，而該影片或聲音紀錄的複製品是向公眾發放或提供的，

則該作品的作者即具有被識別的權利；如有人將該作品的改編本作任何上述用途，則該權利包括被識別為該改編本所根據的原來作品的作者的權利。

(3) 凡有音樂作品，或由擬在音樂伴隨下唱出或講出的文字所構成的文學作品——

- (a) 作商業發表、公開表演、廣播或包括在有線傳播節目服務內；
- (b) 被製成聲音紀錄，而該聲音紀錄的複製品是向公眾發放或提供的；或
- (c) 包括在某影片的聲帶中，而該影片是公開放映的或該影片的複製品是向公眾發放或提供的，

則該作品的作者即具有被識別的權利；如有人將該作品的改編本作任何上述用途，則該權利包括被識別為該改編本所根據的原來作品的作者的權利。

(4) 凡有——

- (a) 藝術作品作商業發表或公開展覽，或其影像作廣播或包括在有線傳播節目服務內；
- (b) 藝術作品的影像包括在影片中，而該影片是公開放映的或該影片的複製品是向公眾發放或提供的；或

(c) in the case of a work of architecture in the form of a building or a model for a building, a sculpture or a work of artistic craftsmanship, copies of a graphic work representing it, or of a photograph of it, are issued or made available to the public.

(5) The author of a work of architecture in the form of a building also has the right to be identified on the building as constructed or, where more than one building is constructed to the design, on the first to be constructed.

(6) The director of a film has the right to be identified whenever the film is shown in public, broadcast or included in a cable programme service or copies of the film are issued or made available to the public.

(7) The right of the author or director under this section is—

- (a) in the case of commercial publication or the issue or making available to the public of copies of a film or sound recording, to be identified in or on each copy or, if that is not appropriate, in some other manner likely to bring his identity to the notice of a person acquiring a copy;
- (b) in the case of identification on a building, to be identified by appropriate means visible to persons entering or approaching the building; and
- (c) in any other case, to be identified in a manner likely to bring his identity to the notice of a person seeing or hearing the performance, exhibition, showing, broadcast or cable programme in question,

and the identification must in each case be clear and reasonably prominent.

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

(9) This section has effect subject to section 91.

[*cf.* 1988 c. 48 s. 77 U.K.]

90. Requirement that right be asserted

(1) A person does not infringe the right conferred by section 89 (right to be identified as author or director) by doing any of the acts mentioned in that section unless the right has been asserted in accordance with the following provisions so as to bind him in relation to that act.

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

- (a) on an assignment of copyright in the work, by including in the instrument effecting the assignment a statement that the author or director asserts in relation to that work his right to be identified; or

(c) 建築物形式或建築物模型形式的建築作品、雕塑品或美術工藝作品的藝術作品，是以平面美術作品表述或拍攝成照片的，而該平面美術作品或該照片的複製品是向公眾發放或提供的，

則該藝術作品的作者即具有被識別為作者的權利。

(5) 建築物形式的建築作品的作者，亦有權在建成的有關建築物上被識別為作者；如有超過一座建築物依照該設計建成，則作者有權在第一座如此建成的建築物上被識別為作者。

(6) 凡公開放映或廣播某影片，或將某影片包括在有線傳播節目服務內，或向公眾發放或提供某影片的複製品，則該影片的導演即具有被識別的權利。

(7) 在——

- (a) 影片或聲音紀錄的複製品作商業發表或向公眾發放或提供方面，作者或導演根據本條具有的權利為有權在每份該等複製品之上或之內被識別，在如此被識別並不適當的情況下，則有權以相當可能使取得該等複製品的人知悉其身分的其他方式被識別；
- (b) 建築物上識別身分方面，作者或導演根據本條具有的權利為有權以適當方法被識別，而該方法須能使進入或接近該建築物的人看見該項識別的；及
- (c) 任何其他方面，作者或導演根據本條具有的權利為有權以任何方式被識別，而該方式須是相當可能使觀看或聆聽有關表演、展覽、放映、廣播或有線傳播節目的人知悉其身分的，

而在每種情況下，該項識別必須清楚和合理地顯眼。

(8) 如作者或導演在體現其被識別的權利時指明用假名、英文名縮寫或其他特定形式的識別方法，則必須採用該形式，否則可採用任何合理形式。

(9) 本條在第 91 條的規限下具有效力。

[*比照* 1988 c. 48 s. 77 U.K.]

90. 被識別的權利必須體現

(1) 除非第 89 條 (被識別為作者或導演的權利) 所賦予的權利已按照以下條文體現，以對作出該條所提及作為的人就他作出該作為加以約束，否則任何人作出該條提及的作為，並不屬侵犯該權利。

(2) 該權利可藉以下方式一般性地體現，或就任何指明的作為或指明類別的作為體現——

- (a) 在轉讓作品的版權時，在轉讓版權的文書中加入述明作者或導演就該作品體現其被識別的權利的陳述；或

- (b) by instrument in writing signed by the author or director.
- (3) The right may also be asserted in relation to the public exhibition of an artistic work—
- (a) by securing that when the author or other first owner of copyright parts with possession of the original, or of a copy made by him or under his direction or control, the author is identified on the original or copy, or on a frame, mount or other thing to which it is attached; or
- (b) by including in a licence by which the author or other first owner of copyright authorizes the making of copies of the work a written statement signed by or on behalf of the person granting the licence that the author asserts his right to be identified in the event of the public exhibition of a copy made in pursuance of the licence.
- (4) The persons bound by an assertion of the right under subsection (2) or (3) are—
- (a) in the case of an assertion under subsection (2)(a), the assignee and anyone claiming through him, whether or not he has notice of the assertion;
- (b) in the case of an assertion under subsection (2)(b), anyone to whose notice the assertion is brought;
- (c) in the case of an assertion under subsection (3)(a), anyone into whose hands that original or copy comes, whether or not the identification is still present or visible;
- (d) in the case of an assertion under subsection (3)(b), the licensee and anyone into whose hands a copy made in pursuance of the licence comes, whether or not he has notice of the assertion.
- (5) In an action for infringement of the right the court shall, in considering remedies, take into account any delay in asserting the right.
- [cf. 1988 c. 48 s. 78 U.K.]

91. Exceptions to right

- (1) The right conferred by section 89 (right to be identified as author or director) is subject to the following exceptions.
- (2) The right does not apply in relation to the following descriptions of work—
- (a) a computer program;
- (b) the design of a typeface;
- (c) any computer-generated work.
- (3) The right does not apply to anything done by or with the authority of the copyright owner where copyright in the work originally vested in the author's employer by virtue of section 14(1) (employee works).

- (b) 由作者或導演簽署的文書。
- (3) 被識別的權利可藉以下方式就公開展覽的藝術作品而體現——
- (a) 凡作者或其他版權第一擁有人放棄對藝術作品原版的管有或放棄對藝術作品複製品(由他本人所製作或在他指示或控制下所製作的)的管有,則確保作者在當時已在該原版或複製品上被識別,或已在附連原版或複製品的框架、裝裱或其他東西上被識別;或
- (b) 在作者或版權第一擁有人授權製作作品複製品的特許中,加入一項由批出特許的人簽署或由他人代其簽署的書面陳述,該陳述指出如依據特許而公開展覽該複製品,則作者即體現其被識別的權利。
- (4) 受根據第(2)或(3)款體現被識別的權利約束的人為——
- (a) 就根據第(2)(a)款體現權利而言,承讓人及透過承讓人提出申索的人(不論他是否知悉該項體現);
- (b) 就根據第(2)(b)款體現權利而言,得悉該項體現的人;
- (c) 就根據第(3)(a)款體現權利而言,獲得有關原版或複製品的人(不論有關識別是否仍存在或可看見);
- (d) 就根據第(3)(b)款體現權利而言,特許持有人及獲得依據特許而製作的複製品的人(不論他是否知悉該項體現)。
- (5) 在就被識別的權利遭侵犯而進行的訴訟中,法庭在考慮補救時,須將體現該權利的任何延誤列為考慮因素。

[比照 1988 c. 48 s. 78 U.K.]

91. 權利的例外情況

- (1) 第 89 條(被識別為作者或導演的權利)所賦予的權利有以下例外情況。
- (2) 該權利並不就以下類別的作品而適用——
- (a) 電腦程式;
- (b) 字體設計;
- (c) 任何由電腦產生的作品。
- (3) 如作品版權原本是憑藉第 14(1) 條(僱員的作品)而歸屬作者的僱主,則該權利不適用於由有關版權擁有人或在其授權下所作出的任何事情。

(4) The right is not infringed by an act which by virtue of any of the following provisions would not infringe copyright in the work—

- (a) section 39 (fair dealing for certain purposes), so far as it relates to the reporting of current events by means of a sound recording, film, broadcast or cable programme;
- (b) section 40 (incidental inclusion of work in an artistic work, sound recording, film, broadcast or cable programme);
- (c) section 41(3) (examination questions);
- (d) section 54 (Legislative Council and judicial proceedings);
- (e) section 55(1) or (2) (statutory inquiries);
- (f) section 66 or 75 (acts permitted on assumptions as to expiry of copyright, etc.).

(5) The right does not apply in relation to any work made for the purpose of reporting current events.

(6) The right does not apply in relation to the publication in—

- (a) a newspaper, magazine or similar periodical; or
- (b) an encyclopaedia, dictionary, yearbook or other collective work of reference,

of a literary, dramatic, musical or artistic work made for the purposes of such publication or made available with the consent of the author for the purposes of such publication.

(7) The right does not apply in relation to—

- (a) a work in which Government copyright or Legislative Council copyright subsists; or
- (b) a work in which copyright originally vested in an international organization by virtue of section 188,

unless the author or director has previously been identified as such in or on published copies of the work.

[*cf.* 1988 c. 48 s. 79 U.K.]

Right to object to derogatory treatment of work

92. Right to object to derogatory treatment of work

(1) The author of a copyright literary, dramatic, musical or artistic work, and the director of a copyright film, has the right in the circumstances mentioned in this section not to have his work subjected to derogatory treatment.

(2) For the purposes of this section—

- (a) “treatment” (處理) of a work means any addition to, deletion from or alteration to or adaptation of the work, other than—

(4) 如任何作為憑藉以下任何條文而不屬侵犯作品的版權，則該作為亦不屬侵犯被識別的權利——

- (a) 第 39 條 (為某些目的而作的公平處理)，但只限於該作為是關乎藉聲音紀錄、影片、廣播或有線傳播節目而報導時事的範圍內；
- (b) 第 40 條 (附帶地將作品包括在某藝術作品、聲音紀錄、影片、廣播或有線傳播節目內)；
- (c) 第 41(3) 條 (試題)；
- (d) 第 54 條 (立法局程序及司法程序)；
- (e) 第 55(1) 或 (2) 條 (法定研訊)；
- (f) 第 66 或 75 條 (基於關於版權期限屆滿等的假設而允許作出的作為)。

(5) 被識別的權利不就任何為報導時事的目的製作的作品而適用。

(6) 如製作文學作品、戲劇作品、音樂作品或藝術作品的目的是將該等作品於——

- (a) 報章、雜誌或相類期刊發表；或
- (b) 百科全書、字典、詞典、年鑑或其他參考性匯集作品發表，

或作者同意為於上述刊物發表而提供作品，則被識別的權利不就該等作品於上述刊物發表而適用。

(7) 凡——

- (a) 有政府版權或立法局版權存在於某作品被識別的權利不就該作品而適用；或
- (b) 某作品的版權憑藉第 188 條而原本歸屬某國際組織，被識別的權利不就該作品而適用，

但如作者或導演以前已在該作品上或作品的已發表版本上被識別為作者或導演，則屬例外。

[*比照* 1988 c. 48 s. 79 U.K.]

反對作品受貶損處理的權利

92. 反對作品受貶損處理的權利

(1) 具有版權的文學作品、戲劇作品、音樂作品或藝術作品的作者以及具有版權的影片的導演，在本條提及的情況下具有使其作品不受貶損處理的權利。

(2) 就本條而言——

- (a) “處理” (treatment) 作品指對作品進行任何增加、刪除、修改或改編，但不包括——

- (i) a translation of a literary or dramatic work; or
 - (ii) an arrangement or transcription of a musical work involving no more than a change of key or register; and
- (b) the treatment of a work is derogatory if it amounts to distortion or mutilation of the work or is otherwise prejudicial to the honour or reputation of the author or director,

and in the following provisions of this section references to a derogatory treatment of a work are construed accordingly.

(3) In the case of a literary, dramatic or musical work the right is infringed by a person who—

- (a) publishes commercially, performs in public, broadcasts or includes in a cable programme service a derogatory treatment of the work; or
- (b) issues or makes available to the public copies of a film or sound recording of, or including, a derogatory treatment of the work.

(4) In the case of an artistic work the right is infringed by a person who—

- (a) publishes commercially or exhibits in public a derogatory treatment of the work, or broadcasts or includes in a cable programme service a visual image of a derogatory treatment of the work;
- (b) shows in public a film including a visual image of a derogatory treatment of the work or issues or makes available to the public copies of such a film; or
- (c) in the case of—
 - (i) a work of architecture in the form of a model for a building;
 - (ii) a sculpture; or
 - (iii) a work of artistic craftsmanship,
 issues or makes available to the public copies of a graphic work representing, or of a photograph of, a derogatory treatment of the work.

(5) Subsection (4) does not apply to a work of architecture in the form of a building; but where the author of such a work is identified on the building and it is the subject of derogatory treatment he has the right to require the identification to be removed.

(6) In the case of a film, the right is infringed by a person who—

- (a) shows in public, broadcasts or includes in a cable programme service a derogatory treatment of the film; or
- (b) issues or makes available to the public copies of a derogatory treatment of the film.

(7) The right conferred by this section extends to the treatment of parts of a work resulting from a previous treatment by a person other than the author or director, if those parts are attributed to, or are likely to be regarded as the work of, the author or director.

- (i) 翻譯文學作品或戲劇作品；或
- (ii) 將音樂作品編曲或改作而只涉及轉調或轉音域；及

(b) 如作品經處理後受歪曲或殘缺不全，或在其他方面對作者或導演的榮譽或聲譽具損害性，則該項處理屬貶損處理，而在以下條文中，凡提述作品受貶損處理，即須據此解釋。

(3) 就文學作品、戲劇作品或音樂作品而言，任何人如——

- (a) 將受貶損處理的作品作商業發表、公開表演、廣播或包括在有線傳播節目服務內；或
- (b) 向公眾發放或提供受貶損處理的作品的影片或聲音紀錄的複製品，或向公眾發放或提供包括受貶損處理的作品在內的影片或聲音紀錄的複製品，

該人即屬侵犯該權利。

(4) 就藝術作品而言，任何人如——

- (a) 將受貶損處理的作品作商業發表或公開展覽，或將受貶損處理的作品的影像廣播或包括在有線傳播節目服務內；
- (b) 公開放映包括受貶損處理的作品的影像在內的影片，或向公眾發放或提供該影片的複製品；或
- (c) 向公眾發放或提供表述受貶損處理的下列作品的平面美術作品或照片的複製品——
 - (i) 建築物模型形式的建築作品；
 - (ii) 雕塑品；或
 - (iii) 美術工藝作品，

該人即屬侵犯該權利。

(5) 第(4)款不適用於建築物形式的建築作品；但如該等作品的作者已在該建築物上被識別，而該建築物屬受貶損處理的標的物，則該作者有權要求除去該識別。

(6) 就影片而言，任何人如——

- (a) 將受貶損處理的影片公開放映、廣播或包括在有線傳播節目服務內；或
- (b) 向公眾發放或提供受貶損處理的影片的複製品，

該人即屬侵犯該權利。

(7) 因先前並非由作者或導演作出的處理而產生的某作品的部分凡受到處理，則該等部分如源出於該作者或導演或相當可能被視為該作者或導演的作品，本條所賦予的權利的適用範圍，即擴及對該等部分的處理。

(8) This section has effect subject to sections 93 and 94 (exceptions to and qualifications of right).

[*cf. 1988 c. 48 s. 80 U.K.*]

93. Exceptions to right

(1) The right conferred by section 92 (right to object to derogatory treatment of work) is subject to the following exceptions.

(2) The right does not apply to a computer program or to any computer-generated work.

(3) The right does not apply in relation to any work made for the purpose of reporting current events.

(4) The right does not apply in relation to the publication in—

(a) a newspaper, magazine or similar periodical; or

(b) an encyclopaedia, dictionary, yearbook or other collective work of reference,

of a literary, dramatic, musical or artistic work made for the purposes of such publication or made available with the consent of the author for the purposes of such publication.

Nor does the right apply in relation to any subsequent exploitation elsewhere of such a work without any modification of the published version.

(5) The right is not infringed by an act which by virtue of section 66 or 75 (acts permitted on assumptions as to expiry of copyright, etc.) would not infringe copyright.

(6) Subject to subsection (7), the right is not infringed by anything done for the purpose of—

(a) avoiding the commission of an offence; or

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

(7) Where the author or director is identified at the time of the relevant act under subsection (6) or has previously been identified in or on published copies of the work, subsection (6) has effect only if there is a sufficient disclaimer.

[*cf. 1988 c. 48 s. 81 U.K.*]

94. Qualification of right in certain cases

(1) This section applies to—

(a) works in which copyright originally vested in the author's employer by virtue of section 14(1) (works produced in course of employment);

(b) works in which Government copyright or Legislative Council copyright subsists; and

(8) 本條在第 93 及 94 條 (權利的例外情況及約制) 的規限下具有效力。

[*比照 1988 c. 48 s. 80 U.K.*]

93. 權利的例外情況

(1) 第 92 條 (反對作品受貶損處理的權利) 所賦予的權利有以下例外情況。

(2) 該權利不適用於電腦程式或任何由電腦產生的作品。

(3) 該權利不就為報導時事的目的製作的作品而適用。

(4) 如製作文學作品、戲劇作品、音樂作品或藝術作品的目的是將該等作品於——

(a) 報章、雜誌或相類期刊發表；或

(b) 百科全書、字典、詞典、年鑑或其他參考性匯集作品發表，

或作者同意為於上述刊物發表而提供作品，則該權利不就該等作品於上述刊物發表而適用。

如該等作品在其已發表版本沒有修改的情況下其後在其他地方被利用，則該權利亦不就該項利用而適用。

(5) 如任何作為憑藉第 66 或 75 條 (在基於關於版權期限屆滿等的假設而允許作出的作為) 而不屬侵犯版權，則該作為亦不屬侵犯該權利。

(6) 在符合第 (7) 款的規定下，任何為以下目的而作出的事情均不屬侵犯該權利——

(a) 避免犯罪；或

(b) 履行由成文法則或根據成文法則所施加的責任。

(7) 凡作者或導演在第 (6) 款所指的有關作為作出之時被識別，或先前已在已發表的作品複製品之內或之上被識別，則必須有足夠的卸責聲明，第 (6) 款方具有效力。

[*比照 1988 c. 48 s. 81 U.K.*]

94. 在某些情況下權利受約制

(1) 凡——

(a) 某作品憑藉第 14(1) 條 (在受僱工作期間製作的作品) 而原本歸屬作者的僱主；

(b) 有政府版權或立法局版權存在於某作品；及

(c) works in which copyright originally vested in an international organization by virtue of section 188.

(2) The right conferred by section 92 (right to object to derogatory treatment of work) does not apply to anything done in relation to a work referred to in subsection (1) by or with the authority of the copyright owner unless the author or director—

- (a) is identified at the time of the relevant act; or
- (b) has previously been identified in or on published copies of the work,

and where in such a case the right does apply, it is not infringed if there is a sufficient disclaimer.

[*cf. 1988 c. 48 s. 82 U.K.*]

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

(1) The right conferred by section 92 (right to object to derogatory treatment of work) is also infringed by a person who—

- (a) possesses for the purpose of trade or business;
- (b) sells or lets for hire, or offers or exposes for sale or hire;
- (c) for the purpose of trade or business exhibits in public or distributes; or
- (d) distributes otherwise than for the purpose of trade or business so as to affect prejudicially the honour or reputation of the author or director,

an article which is, and which he knows or has reason to believe is, an infringing article.

(2) An “infringing article” (侵犯權利物品) means a work or a copy of a work which—

- (a) has been subjected to derogatory treatment within the meaning of section 92; and
- (b) has been or is likely to be the subject of any of the acts mentioned in that section in circumstances infringing that right.

[*cf. 1988 c. 48 s. 83 U.K.*]

False attribution of work

96. False attribution of work

(1) A person has the right in the circumstances mentioned in this section—

- (a) not to have a literary, dramatic, musical or artistic work falsely attributed to him as author; and

(c) 某作品的版權憑藉第 188 條而原本歸屬某國際組織，則本條適用於該作品。

(2) 第 92 條 (反對作品受貶損處理的權利) 所賦予的權利，不適用於由第 (1) 款所提述作品的版權擁有人或在其授權下就該等作品所作出的任何事情，但如作者或導演——

- (a) 在有關作為作出之時被識別；或
- (b) 先前已在作品的已發表複製品之內或之上被識別，

則屬例外，而凡該權利在該情況下適用，則只要有足夠的卸責聲明，該權利不屬遭侵犯。

[*比照 1988 c. 48 s. 82 U.K.*]

95. 管有侵犯權利物品或進行侵犯權利物品的交易而侵犯權利

(1) 任何人知道或有理由相信某物品屬侵犯權利物品而將該物品作以下處置，即屬侵犯第 92 條 (反對作品受貶損處理的權利) 所賦予的權利——

- (a) 為交易或業務的目的而管有該物品；
- (b) 將該物品出售、出租、要約出售或要約出租，或為出售或出租而展示該物品；
- (c) 為交易或業務的目的而公開展覽該物品或分發該物品；或
- (d) 並非為交易或業務的目的而分發該物品致使作者或導演的榮譽或聲譽蒙受不利影響。

(2) “侵犯權利物品” (infringing article) 指某項作品或該作品的複製品，而該作品或複製品——

- (a) 曾受到第 92 條所指的貶損處理；及
- (b) 曾經或相當可能在侵犯該權利的情況下屬該條提及的作為的標的物。

[*比照 1988 c. 48 s. 83 U.K.*]

作品的虛假署名

96. 作品的虛假署名

(1) 任何人在本條提及情況下具有——

- (a) 免被虛假地署名為某文學作品、戲劇作品、音樂作品或藝術作品的作者的權利；及

(b) not to have a film falsely attributed to him as director, and in this section an “attribution” (署名), in relation to such a work, means a statement (express or implied) as to who is the author or director.

(2) The right is infringed by a person who—

- (a) issues or makes available to the public copies of a work of any of those descriptions in or on which there is a false attribution; or
- (b) exhibits in public an artistic work, or a copy of an artistic work, in or on which there is a false attribution.

(3) The right is also infringed by a person who—

- (a) in the case of a literary, dramatic or musical work, performs the work in public, broadcasts it or includes it in a cable programme service as being the work of a person; or
- (b) in the case of a film, shows it in public, broadcasts it or includes it in a cable programme service as being directed by a person,

knowing or having reason to believe that the attribution is false.

(4) The right is also infringed by a person who issues or makes available to the public or displays in public material containing a false attribution in connection with any of the acts mentioned in subsection (2) or (3).

(5) The right is also infringed by a person who for the purpose of trade or business—

- (a) possesses or deals with a copy of a work of any of the descriptions mentioned in subsection (1) in or on which there is a false attribution; or
- (b) in the case of an artistic work, possesses or deals with the work itself when there is a false attribution in or on it,

knowing or having reason to believe that there is such an attribution and that it is false.

(6) In the case of an artistic work the right is also infringed by a person who for the purpose of trade or business—

- (a) deals with a work which has been altered after the author parted with possession of it as being the unaltered work of the author; or
- (b) deals with a copy of such an altered work as being a copy of the unaltered work of the author,

knowing or having reason to believe that that is not the case.

(7) References in this section to dealing are to selling or letting for hire, offering or exposing for sale or hire, exhibiting in public, or distributing.

(8) This section applies where, contrary to the fact—

- (a) a literary, dramatic or musical work is falsely represented as being an adaptation of the work of a person; or
- (b) a copy of an artistic work is falsely represented as being a copy made by the author of the artistic work,

as it applies where the work is falsely attributed to a person as author.

[cf. 1988 c. 48 s. 84 U.K.]

(b) 免被虛假地署名為某影片的導演的權利，而在本條中，“署名”(attribution)就上述作品而言，指指出誰是作者或導演的陳述(明示的或隱含的)。

(2) 任何人如——

- (a) 向公眾發放或提供任何在內裏或上面有虛假署名的上述類別作品的複製品；或
- (b) 公開展覽在內裏或上面有虛假署名的藝術作品或其複製品，

即屬侵犯該權利。

(3) 任何人如——

- (a) 將文學作品、戲劇作品或音樂作品當作某人的作品而公開表演、廣播該作品或將該作品包括在有線傳播節目服務內；或
- (b) 將影片當作某人所導演的影片而公開放映、廣播該影片或將該影片包括在有線傳播節目服務內，

而他知道或有理由相信有關署名是虛假的，他亦屬侵犯該權利。

(4) 凡有材料載有與第(2)或(3)款提及的作為有關的虛假署名，任何人如向公眾發放或提供或公開展示該材料，亦屬侵犯該權利。

(5) 任何人為交易或業務的目的——

- (a) 管有在內裏或上面有虛假署名的第(1)款提及的任何類別作品的複製品，或進行該等複製品的交易；或
- (b) 管有在內裏或上面有虛假署名的藝術作品，或進行該等作品的交易，

而他知道或有理由相信有該署名存在和該署名是虛假的，他亦屬侵犯該權利。

(6) 凡作者放棄對其藝術作品的管有後，該作品曾經被更改，則任何人如為交易或業務的目的——

- (a) 將該經更改的作品作為作者未經更改的作品(而他知道或有理由相信事實並非如此)而進行該經更改的作品的交易；或
- (b) 將經更改的作品的複製品作為作者未經更改作品的複製品(而他知道或有理由相信事實並非如此)而進行該複製品的交易，

他亦屬侵犯該權利。

(7) 在本條中，凡提述進行交易，即提述出售、出租、要約出售或要約出租、公開展覽、分發或為出售或出租而展示。

(8) 凡有——

- (a) 文學作品、戲劇作品或音樂作品被虛假地陳述為某人的作品的改編本；或
- (b) 藝術作品的複製品被虛假地陳述為該藝術作品的作者所製作的複製品，

而事實並非如此，本條亦予適用，一如在某人被虛假署名為該作品的作者的情況下適用一樣。

[比照 1988 c. 48 s. 84 U.K.]

Supplementary

補充條文

97. Duration of rights

(1) The rights conferred by section 89 (right to be identified as author or director) and section 92 (right to object to derogatory treatment of work) continue to subsist so long as copyright subsists in the work.

(2) The right conferred by section 96 (false attribution) continues to subsist until 20 years after a person's death.

[*cf. 1988 c. 48 s. 86 U.K.*]

98. Consent and waiver of rights

(1) It is not an infringement of any of the rights conferred by this Division to do any act to which the person entitled to the right has consented.

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

(3) A waiver—

(a) may relate to a specific work, to works of a specified description or to works generally, and may relate to existing or future works; and

(b) may be conditional or unconditional and may be expressed to be subject to revocation,

and if made in favour of the owner or prospective owner of the copyright in the work or works to which it relates, it is presumed to extend to his licensees and successors in title unless a contrary intention is expressed.

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

[*cf. 1988 c. 48 s. 87 U.K.*]

99. Application of provisions to joint works

(1) The right conferred by section 89 (right to be identified as author or director) is, in the case of a work of joint authorship, a right of each joint author to be identified as a joint author and must be asserted in accordance with section 90 by each joint author in relation to himself.

(2) The right conferred by section 92 (right to object to derogatory treatment of work) is, in the case of a work of joint authorship, a right of each joint author and his right is satisfied if he consents to the treatment in question.

(3) A waiver under section 98 of those rights by one joint author does not affect the rights of the other joint authors.

97. 權利的期限

(1) 第 89 條 (被識別為作者或導演的權利) 所賦予的權利以及第 92 條 (反對作品受貶損處理的權利) 所賦予的權利，在作品的版權存在的期間持續存在。

(2) 第 96 條 (虛假署名) 所賦予的權利持續存在，直至有關的人死後 20 年為止。

[*比照 1988 c. 48 s. 86 U.K.*]

98. 同意及放棄權利

(1) 具有本分部所賦予的任何權利的人如同意作出某作為，則作出該作為並不屬侵犯該權利。

(2) 任何該等權利可藉由放棄權利的人簽署的文書而放棄。

(3) 放棄權利——

(a) 可關乎某特定作品、某指明類別的作品或一般地關乎所有作品，以及可關乎現存或未來的作品；及

(b) 可以是有條件或無條件的，亦可明示為可予撤回的，

而放棄權利如是為惠及該項放棄權利所關乎的作品的版權擁有人或準擁有人而作出的，則可推定該項放棄權利亦延伸而適用於該擁有人或準擁有人的特許持有人及所有權繼承人，但如明示有相反的意願，則屬例外。

(4) 本分部不得解釋為摒除與任何關乎第 (1) 款提及的權利的非正式放棄或其他處理有關的一般合約法或不容反悔法的施行。

[*比照 1988 c. 48 s. 87 U.K.*]

99. 對合作作品適用的條文

(1) 就合作作品而言，第 89 條 (被識別為作者或導演的權利) 所賦予的權利為每名合作作者被識別為合作作者的權利，而該權利須由每名合作作者按照第 90 條就其本身而體現。

(2) 就合作作品而言，第 92 條 (反對作品受貶損處理的權利) 所賦予的權利為每名合作作者的權利；如合作作者同意作品接受有關的處理，即屬達成其權利。

(3) 合作作者中的其中一名作者如根據第 98 條放棄該等權利，並不影響其他合作作者的該等權利。

(4) The right conferred by section 96 (false attribution) is infringed, in the circumstances mentioned in that section—

- (a) by any false statement as to the authorship of a work of joint authorship; and
- (b) by the false attribution of joint authorship in relation to a work of sole authorship,

and such a false attribution infringes the right of every person to whom authorship of any description is, whether rightly or wrongly, attributed.

(5) The provisions of this section also apply (with any necessary adaptations) in relation to a film which was, or is alleged to have been, jointly directed, as they apply to a work which is, or is alleged to be, a work of joint authorship.

A film is “jointly directed” if it is made by the collaboration of 2 or more directors and the contribution of each director is not distinct from that of the other director or directors.

[*cf.* 1988 c. 48 s. 88 U.K.]

100. Application of provisions to parts of works

(1) The right conferred by section 89 (right to be identified as author or director) applies in relation to the whole or any substantial part of a work.

(2) The rights conferred by section 92 (right to object to derogatory treatment of work) and section 96 (false attribution) apply in relation to the whole or any part of a work.

[*cf.* 1988 c. 48 s. 89 U.K.]

DIVISION V

DEALINGS WITH RIGHTS IN COPYRIGHT WORKS

Copyright

101. Assignment and licences

(1) Copyright is transmissible by assignment, by testamentary disposition or by operation of law, as personal or moveable property.

(2) An assignment or other transmission of copyright may be partial, that is, limited so as to apply—

- (a) to one or more, but not all, of the things the copyright owner has the exclusive right to do;
- (b) to part, but not the whole, of the period for which the copyright is to subsist.

(4) 在第 96 條(虛假署名)提及的情況下——

- (a) 任何有關合作作品的作者的虛假陳述；及
- (b) 就單人作品虛假地以合作作者署名，

均屬侵犯第 96 條所賦予的權利，而上述虛假署名亦屬侵犯每名被署名(不論該署名是否正確)為任何類別作者的人的權利。

(5) 本條條文經必要的修改後，亦適用於合作導演(或被指稱為合作導演)的影片，一如該等條文適用於合作作品(或被指稱為合作作品)的作品一樣。

如某影片是由 2 名或多於 2 名導演合作製作，而且每名導演的貢獻是與其他導演的貢獻分不開的，該影片即屬“合作導演”的影片。

[*比照* 1988 c. 48 s. 88 U.K.]

100. 對作品的部分適用的條文

(1) 第 89 條(被識別為作者或導演的權利)所賦予的權利就作品的整項或其任何實質部分而適用。

(2) 第 92 條(反對作品受貶損處理的權利)所賦予的權利以及第 96 條(虛假署名)所賦予的權利，均就作品的整項或其任何部分而適用。

[*比照* 1988 c. 48 s. 89 U.K.]

第 V 分部

進行版權作品的權利的交易

版權

101. 轉讓及特許

(1) 版權可作為非土地財產或動產，藉轉讓、遺囑性質的處置或法律的施行而轉傳。

(2) 版權的轉讓或以其他方式的轉傳可以是局部的，即只局限適用於——

- (a) 版權擁有人具有獨有權利可作出的一項或多於一項的事情，但並非版權擁有人具有獨有權利可作出的全部事情；
- (b) 版權存在的期間的部分，而非該期間的整段。

(3) An assignment of copyright is not effective unless it is in writing signed by or on behalf of the assignor.

(4) A licence granted by a copyright owner is binding on every successor in title to his interest in the copyright, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser; and references in this Part to doing anything with, or without, the licence of the copyright owner are construed accordingly.

[*cf.* 1988 c. 48 s. 90 U.K.]

102. Prospective ownership of copyright

(1) Without prejudice to sections 14 and 15, where by an agreement made in relation to future copyright, and signed by or on behalf of the prospective owner of the copyright, the prospective owner purports to assign the future copyright (wholly or partially) to another person, then if, on the copyright coming into existence, the assignee or another person claiming under him would be entitled as against all other persons to require the copyright to be vested in him, the copyright vests in the assignee or his successor in title by virtue of this subsection.

(2) In this Part—
“future copyright” (未來版權) means copyright which will or may come into existence in respect of a future work or class of works or on the occurrence of a future event; and
“prospective owner” (準擁有人) is construed accordingly, and includes a person who is prospectively entitled to copyright by virtue of such an agreement as is mentioned in subsection (1).

(3) A licence granted by a prospective owner of copyright is binding on every successor in title to his interest (or prospective interest) in the right, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser; and references in this Part to doing anything with, or without, the licence of the copyright owner are construed accordingly.

[*cf.* 1988 c. 48 s. 91 U.K.]

103. Exclusive licences

(1) In this Part an “exclusive licence” (專用特許) means a licence in writing signed by or on behalf of the copyright owner authorizing the licensee to the exclusion of all other persons, including the person granting the licence, to exercise a right which would otherwise be exercisable exclusively by the copyright owner.

(3) 版權的轉讓必須採用書面形式，由轉讓人簽署或由他人代其簽署，否則無效。

(4) 由版權擁有人批出的特許對其版權的權益的每名所有權繼承人均具約束力，但付出有值代價而並不知悉（不論實際知悉或法律構定的知悉）該特許存在的真誠購買人及從該購買人取得所有權的人則除外；在本部中，凡提述在版權擁有人的特許下或在沒有版權擁有人的特許下而作出的任何事情，均據此解釋。

[*比照* 1988 c. 48 s. 90 U.K.]

102. 版權的準擁有人

(1) 在不損害第 14 及 15 條的原則下，凡版權的準擁有人藉就未來版權訂立並簽署（或由他人代其簽署）的協議，宣稱將該未來版權（全部或局部）轉讓他人，則在該版權產生之時，承讓人或藉承讓人提出申索的人如相對於所有其他人而言，將會有權要求將版權歸屬予他，該版權即憑藉本款歸屬該承讓人或其所有權繼承人。

(2) 在本部中——
“未來版權” (future copyright) 指就未來的作品或某種類的作品而將會或可能產生的版權，或將會或可能因某未來事件的發生而產生的版權；及
“準擁有人” (prospective owner) 須據此解釋，並且包括憑藉第 (1) 款提及的協議而預期會有權享有版權的人。

(3) 由版權的準擁有人批出的特許對其權利的權益（或預期權益）的每名所有權繼承人均具約束力，但付出有值代價而並不知悉（不論實際知悉或法律構定的知悉）該特許存在的真誠購買人及從該購買人取得所有權的人則除外；在本部中，凡提述在版權擁有人的特許下或在沒有版權擁有人的特許下而作出的任何事情，均據此解釋。

[*比照* 1988 c. 48 s. 91 U.K.]

103. 專用特許

(1) 在本部中，“專用特許” (exclusive licence) 指由版權擁有人簽署或由他人代其簽署的書面特許，授權特許持有人在摒除所有其他人（包括批出該特許的人）的情況下行使本應屬該版權擁有人可行使的獨有權利。

(2) The licensee under an exclusive licence has the same rights against a successor in title who is bound by the licence as he has against the person granting the licence.

[*cf.* 1988 c. 48 s. 92 U.K.]

104. Copyright to pass under will with unpublished work

Where under a bequest (whether specific or general) a person is entitled, beneficially or otherwise, to—

- (a) an original document or other material thing recording or embodying a literary, dramatic, musical or artistic work which was not published before the death of the testator; or
- (b) an original material thing containing a sound recording or film which was not published before the death of the testator,

then unless a contrary intention is indicated in the testator's will or a codicil to it, the bequest includes the copyright in the work in so far as the testator was the owner of the copyright immediately before his death.

[*cf.* 1988 c. 48 s. 93 U.K.]

Moral rights

105. Moral rights not assignable

The rights conferred by Division IV (moral rights) are not assignable.

[*cf.* 1988 c. 48 s. 94 U.K.]

106. Transmission of moral rights on death

(1) On the death of a person entitled to the right conferred by section 89 (right to identification of author or director) or section 92 (right to object to derogatory treatment of work)—

- (a) the right passes to such a person as he may by testamentary disposition specifically direct;
- (b) if there is no such direction but the copyright in the work in question forms part of his estate, the right passes to the person to whom the copyright passes; and
- (c) if or to the extent that the right does not pass under paragraph (a) or (b) it is exercisable by his personal representatives.

(2) Where copyright forming part of a person's estate passes in part to one person and in part to another, as for example where a bequest is limited so as to apply—

(2) 在專用特許下的特許持有人所具有的相對於受特許約束的所有權繼承人而言的權利，與其所具有的相對於批出該特許的人而言的權利相同。

[*比照* 1988 c. 48 s. 92 U.K.]

104. 版權藉遺囑而與未發表作品一併轉移

凡某人根據遺贈 (不論是特定遺贈或一般遺贈) 而對以下項目享有實益或並非實益的權益——

- (a) 記錄或載有在立遺囑人死亡之前仍未發表的文學作品、戲劇作品、音樂作品或藝術作品的原稿或其他實物；或
- (b) 錄載在立遺囑人死亡之前仍未發表的聲音紀錄或影片的原實物，

則只要該立遺囑人在緊接其死亡前是該作品的版權的擁有人，該遺贈即包括該作品的版權，但如立遺囑人的遺囑或遺囑更改附件顯示相反的意願，則屬例外。

[*比照* 1988 c. 48 s. 93 U.K.]

精神權利

105. 精神權利不可轉讓

第 IV 分部 (精神權利) 所賦予的權利不可轉讓。

[*比照* 1988 c. 48 s. 94 U.K.]

106. 在死亡時轉傳精神權利

(1) 凡具有第 89 條 (作者或導演的被識別權利) 或第 92 條 (反對作品受貶損處理的權利) 所賦予的權利的人死亡——

- (a) 該等權利轉移予該人藉遺囑性質的處置而特定指示的人；
- (b) 如無該等指示但有關作品的版權構成其遺產的一部分，而該版權轉移予某人，則該權利轉移予該人；及
- (c) 如該權利沒有根據 (a) 或 (b) 段轉移，則該權利可由其遺產代理人行使；如該權利在某程度上沒有根據 (a) 或 (b) 段轉移，則該權利在該程度上可由其遺產代理人行使。

(2) 凡構成某人遺產的一部分的版權部分轉移予某人而部分則轉移予另一人，例如某遺贈只局限適用於——

- (a) to one or more, but not all, of the things the copyright owner has the exclusive right to do or authorize; or
- (b) to part, but not the whole, of the period for which the copyright is to subsist,

any right which passes with the copyright by virtue of subsection (1) is correspondingly divided.

(3) Where by virtue of subsection (1)(a) or (b) a right becomes exercisable by more than one person—

- (a) it may, in the case of the right conferred by section 89 (right to identification of author or director), be asserted by any of them;
- (b) it is, in the case of the right conferred by section 92 (right to object to derogatory treatment of work), a right exercisable by each of them and is satisfied in relation to any of them if he consents to the treatment or act in question; and
- (c) any waiver of the right in accordance with section 98 by one of them does not affect the rights of the others.

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

(5) Any infringement after a person's death of the right conferred by section 96 (false attribution) is actionable by his personal representatives.

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

[*cf.* 1988 c. 48 s. 95 U.K.]

DIVISION VI

REMEDIES FOR INFRINGEMENT

Rights and remedies of copyright owner

107. Infringement actionable by copyright owner

- (1) An infringement of copyright is actionable by the copyright owner.
- (2) In an action for infringement of copyright all such relief by way of damages, injunctions, accounts or otherwise is available to the plaintiff as is available in respect of the infringement of any other property right.
- (3) This section has effect subject to the following provisions of this Division.

[*cf.* 1988 c. 48 s. 96 U.K.]

- (a) 版權擁有人具有獨有權利作出或授權作出的一項或多於一項的事情，但並非版權擁有人具有獨有權利作出或授權作出的全部事情；或
- (b) 版權存在的期間的部分，而非該期間的整段，

則任何憑藉第(1)款而與版權一併轉移的權利，亦相應地作出分拆。

(3) 凡某權利憑藉第(1)(a)或(b)款變成可由多於一人行使，則——

- (a) 就第 89 條(作者或導演的被識別權利)所賦予的權利而言，可由其中任何一人體現；
- (b) 就第 92 條(反對作品受貶損處理的權利)所賦予的權利而言，該權利屬可由該等人各自行使的權利；如其中任何一人同意有關的處理或作為，即屬達成該人的權利；及
- (c) 如其中任何一人按照第 98 條放棄該權利，並不影響其他人的該權利。

(4) 凡權利憑藉第(1)款轉移予某人，先前所作的同意或放棄對該人具約束力。

(5) 凡某人獲第 96 條(虛假署名)所賦予的權利在其死後遭侵犯，則該人的遺產代理人可就該項侵犯而提起訴訟。

(6) 該遺產代理人憑藉本條就某人的權利在該人死後遭侵犯而追討所得的損害賠償，須作為該人的遺產的一部分而傳予，猶如該訴訟權在緊接該人死亡前已存在並歸屬該人一樣。

[*比照* 1988 c. 48 s. 95 U.K.]

第 VI 分部

侵犯權利的補救

版權擁有人的權利和補救

107. 版權擁有人可就侵犯版權提起訴訟

- (1) 版權擁有人可就侵犯版權提起訴訟。
- (2) 在就侵犯版權進行的訴訟中，原告人可得損害賠償、強制令、交出利潤或其他形式的濟助，與就侵犯任何其他產權而可得者相同。
- (3) 本條在本分部的以下條文的規限下具有效力。

[*比照* 1988 c. 48 s. 96 U.K.]

108. Provisions as to damages in infringement action

(1) Where in an action for infringement of copyright it is shown that at the time of the infringement the defendant did not know, and had no reason to believe, that copyright subsisted in the work to which the action relates, the plaintiff is not entitled to damages against him, but without prejudice to any other remedy.

(2) The court may in an action for infringement of copyright having regard to all the circumstances, and in particular to—

- (a) the flagrancy of the infringement;
- (b) any benefit accruing to the defendant by reason of the infringement; and
- (c) the completeness, accuracy and reliability of the defendant's business accounts and records,

award such additional damages as the justice of the case may require.

[*cf.* 1988 c. 48 s. 97 U.K.]

109. Order for delivery up

(1) Where a person—

- (a) has an infringing copy of a work in his possession, custody or control for the purpose of trade or business; or
- (b) has in his possession, custody or control an article specifically designed or adapted for making copies of a particular copyright work, knowing or having reason to believe that it has been or is to be used to make infringing copies,

the owner of the copyright in the work may apply to the court for an order that the infringing copy or article be delivered up to him or to such other person as the court may direct.

(2) An application must be made before the end of the period specified in section 110 (period after which remedy of delivery up not available); and the court shall not make an order under this section unless the court also makes, or it appears to the court that there are grounds for making, an order under section 111 (order as to disposal of infringing copy or other article).

(3) A person to whom an infringing copy or other article is delivered up in pursuance of an order under this section shall, if an order under section 111 is not made, retain it pending the making of an order, or the decision not to make an order, under that section.

(4) Nothing in this section affects any other power of the court.

[*cf.* 1988 c. 48 s. 99 U.K.]

108. 關於侵犯版權訴訟中的損害賠償的規定

(1) 在就侵犯版權進行的訴訟中，如證明在侵犯版權時，被告人不知道和沒有理由相信該訴訟所關乎的作品有版權存在，則原告人無權向被告入要求損害賠償，但任何其他補救則不受影響。

(2) 在就侵犯版權進行的訴訟中，法院在顧及案件的所有情況，尤其是以下情況後——

- (a) 該等權利受侵犯的昭彰程度；
- (b) 因侵犯版權行為而歸於被告人的利益；及
- (c) 被告人的業務帳目和紀錄的完整程度、準確程度及可靠程度，

可為在該案件達致公正所需而判給額外損害賠償。

[*比照* 1988 c. 48 s. 97 U.K.]

109. 交付令

(1) 凡任何人——

- (a) 為交易或業務的目的而管有、保管或控制某作品的侵犯版權複製品；或
- (b) 管有、保管或控制某物品，而該物品是經特定設計或改裝，用以製作某版權作品的複製品的，而該人知道或有理由相信該物品曾經或將會用作製作侵犯版權複製品，

則該作品的版權的擁有人可向法院申請命令，規定該等侵犯版權複製品或該物品須交付予他或法院所指示的其他人。

(2) 任何申請必須在第 110 條 (期限過後不得以交付作補救) 指明的期限結束前提出；除非法院亦根據第 111 條 (處置侵犯版權複製品或其他物品的命令) 作出命令，或法院認為有理由根據第 111 條作出命令，否則法院不得根據本條作出命令。

(3) 如法院沒有根據第 111 條作出命令，則依據一項根據本條作出的命令而獲交付侵犯版權複製品或其他物品的人須保留該侵犯版權複製品或該物品，以聽候法院根據該條作出命令或裁定不根據該條作出命令。

(4) 本條並不影響法院的任何其他權力。

[*比照* 1988 c. 48 s. 99 U.K.]

110. Period after which remedy of delivery up not available

(1) An application for an order under section 109 (order for delivery up in civil proceedings) may not be made after the end of the period of 6 years from the date on which the infringing copy or article in question was made, subject to the following provisions of this section.

(2) If during the whole or any part of that period the copyright owner—

(a) is under a disability; or

(b) is prevented by fraud or concealment from discovering the facts entitling him to apply for an order,

an application may be made at any time before the end of the period of 6 years from the date on which he ceased to be under a disability or, as the case may be, could with reasonable diligence have discovered those facts.

(3) In subsection (2) “disability” (無行為能力) has the same meaning as in the Limitation Ordinance (Cap. 347).

[*cf.* 1988 c. 48 s. 113 U.K.]

111. Order as to disposal of infringing copy or other article

(1) An application may be made to the court for an order that an infringing copy or other article delivered up in pursuance of an order under section 109 should be—

(a) forfeited to the copyright owner; or

(b) destroyed or otherwise dealt with as the court may think fit,

or for a decision that no such order should be made.

(2) In considering what order (if any) should be made, the court shall consider whether other remedies available in an action for infringement of copyright would be adequate to compensate the copyright owner and to protect his interests.

(3) The power to make rules of court under section 54 of the Supreme Court Ordinance (Cap. 4) includes power to make rules of court for the purposes of this section.

(4) The rules of court made for the purposes of this section may include rules as to the service of notice on persons having an interest in the copy or other articles, and any such person is entitled—

(a) to appear in proceedings for an order under this section, whether or not he was served with notice; and

(b) to appeal against any order made, whether or not he appeared.

(5) An order under this section does not take effect until the end of the period within which notice of an appeal may be given or, if before the end of that period notice of appeal is duly given, until the final determination or abandonment of the proceedings on the appeal.

110. 期限過後不得以交付作為補救

(1) 除本條以下條文另有規定外，任何人不得在自有關的侵犯版權複製品或物品的製作日期起計的6年期間完結後，根據第109條(在民事法律程序中的交付令)提出申請。

(2) 如在上述期間的整段或任何部分，版權擁有人——

(a) 無行為能力；或

(b) 因欺詐或隱瞞事實而使他不能夠發現令他有權申請該命令的事實，則在自他不再無行為能力或在自他假使付出合理的努力便應可發現該等事實(視屬何情況而定)的日期起計的6年期間完結之前的任何時間，均可提出該申請。

(3) 在第(2)款中，“無行為能力”(disability)的涵義與《時效條例》(第347章)中該詞的涵義相同。

[*比照* 1988 c. 48 s. 113 U.K.]

111. 處置侵犯版權複製品或其他物品的命令

(1) 凡有依據一項根據第109條作出的命令而交付的侵犯版權複製品或其他物品，則可向法院申請命令，以將該等複製品或其他物品——

(a) 沒收歸予版權擁有人所有；或

(b) 銷毀或按法院認為合適的其他方法處置，或向法院申請不應作出該等命令的裁決。

(2) 在考慮應作出甚麼命令(如有的話)時，法院須考慮就侵犯版權進行訴訟可獲得的其他補救是否足以補償版權擁有人和保護該版權擁有人的權益。

(3) 根據《最高法院條例》(第4章)第54條訂立法院規則的權力，包括為施行本條而訂立法院規則的權力。

(4) 為施行本條而訂立的法院規則，可包括送達通知予對複製品或其他物品具有權益的人的規則，而任何該等人士均有權——

(a) 在為根據本條作出命令而進行的法律程序中出庭(不論他是否獲送達通知)；及

(b) 提出上訴反對任何已作出的命令(不論他是否曾出庭)。

(5) 根據本條作出的命令，在可給予上訴通知的期限完結時始生效，如上訴通知在該期限完結前妥為給予，則在上訴的法律程序獲最終裁定或遭放棄時始生效。

(6) Where there is more than one person interested in a copy or other article, the court may make such order as it thinks just and may (in particular) direct that the copy or article be sold, or otherwise dealt with, and the proceeds divided.

(7) If the court decides that no order should be made under this section, the person in whose possession, custody or control the copy or other article was before being delivered up is entitled to its return.

(8) References in this section to a person having an interest in a copy or other article include any person in whose favour an order could be made in respect of it under this section or under section 231 (which makes similar provision in relation to infringement of rights in performances).

[*cf.* 1988 c. 48 s. 114 U.K.]

Rights and remedies of exclusive licensee

112. Rights and remedies of exclusive licensee

(1) An exclusive licensee has, except against the copyright owner, the same rights and remedies in respect of matters occurring after the grant of the licence as if the licence had been an assignment.

(2) His rights and remedies are concurrent with those of the copyright owner; and references in the relevant provisions of this Part to the copyright owner shall be construed accordingly.

(3) In an action brought by an exclusive licensee by virtue of this section a defendant may avail himself of any defence which would have been available to him if the action had been brought by the copyright owner.

[*cf.* 1988 c. 48 s. 101 U.K.]

113. Exercise of concurrent rights

(1) Subject to subsection (2), where an action for infringement of copyright brought by the copyright owner or an exclusive licensee relates (wholly or partly) to an infringement in respect of which they have concurrent rights of action, the copyright owner or, as the case may be, the exclusive licensee may not, without the leave of the court, proceed with the action unless the other is either joined as a plaintiff or added as a defendant.

(2) Where an action for infringement of copyright brought by an exclusive licensee relates (wholly or partly) to an infringement in respect of an infringing copy within the meaning of section 35(3), the exclusive licensee may not, without the leave of the court, proceed with the action unless the copyright owner is joined as a plaintiff.

(6) 凡多於一人對複製品或其他物品享有權益，法院可作出其認為公正的命令，並尤其可指示將該複製品或物品出售或作其他處置，並將收益分配。

(7) 如法院裁定不應根據本條作出命令，則在複製品或其他物品交付之前管有、保管或控制該複製品或該其他物品的人，具有獲發還該複製品或物品的權利。

(8) 在本條中，凡提述對複製品或其他物品享有權益的人，即包括可根據本條或第 231 條 (該條就侵犯在表演中的權利訂立相類的條文) 就該複製品或該等其他物品作出命令而惠及的任何人。

[*比照* 1988 c. 48 s. 114 U.K.]

專用特許持有人的權利和補救

112. 專用特許持有人的權利和補救

(1) 專用特許持有人就特許批出之後所發生的事項，具有在猶如該項特許是一項轉讓的情況下相同的權利和補救，但相對於版權擁有人而言，則屬例外。

(2) 專用特許持有人的權利和補救與版權擁有人的權利和補救是同時具有的；而在本部的有關條文中，凡提述版權擁有人，亦據此解釋。

(3) 在專用特許持有人憑藉本條而提起的訴訟中，被告人可引用的免責辯護，與在假使該訴訟是版權擁有人提起的情況下被告人可引用的免責辯護相同。

[*比照* 1988 c. 48 s. 101 U.K.]

113. 行使同時具有的權利

(1) 在符合第 (2) 款的規定下，凡版權擁有人或專用特許持有人就侵犯版權提起訴訟，而該版權擁有人及專用特許持有人就該訴訟 (全部或部分) 所關乎的侵犯版權同時具有訴訟權，則除非另一方加入作為原告人或被告人，否則該版權擁有人或專用特許持有人 (視屬何情況而定) 如沒有法院許可，不得進行該訴訟。

(2) 凡專用特許持有人就侵犯版權提起訴訟，而該訴訟 (全部或部分) 關乎第 35(3) 條所指的侵犯版權複製品所涉的侵犯版權，則除非版權擁有人加入作為原告人，否則專用特許持有人如沒有法院許可，不得進行該訴訟。

(3) In an application for leave under subsection (2) to proceed without joining the copyright owner as plaintiff, the court shall not grant leave unless there are exceptional circumstances, other than costs considerations, beyond the control of the copyright owner or exclusive licensee.

(4) A copyright owner or exclusive licensee who is added as a defendant in pursuance of subsection (1) is not liable for any costs in the action unless he takes part in the proceedings.

(5) The provisions of this section do not affect the granting of interlocutory relief on an application by a copyright owner or exclusive licensee alone.

(6) Where an action for infringement of copyright is brought which relates (wholly or partly) to an infringement in respect of which the copyright owner and an exclusive licensee have or had concurrent rights of action—

(a) the court shall in assessing damages take into account—

(i) the terms of the licence; and

(ii) any pecuniary remedy already awarded or available to either of them in respect of the infringement;

(b) the court shall not direct an account of profits if an award of damages has been made, or an account of profits has been directed, in favour of the other of them in respect of the infringement; and

(c) the court shall if an account of profits is directed apportion the profits between them as the court considers just, subject to any agreement between them,

and these provisions apply whether or not the copyright owner and the exclusive licensee are both parties to the action.

(7) The copyright owner shall notify any exclusive licensee having concurrent rights before applying for an order under section 109 (order for delivery up); and the court may on the application of the licensee make such order under section 109 as it thinks fit having regard to the terms of the licence.

[*cf. 1988 c. 48 s. 102 U.K.*]

Remedies for infringement of moral rights

114. Remedies for infringement of moral rights

(1) An infringement of a right conferred by Division IV (moral rights) is actionable as a breach of statutory duty owed to the person entitled to the right.

(3) 如專用特許持有人根據第(2)款申請在沒有版權擁有人加入作為原告人的情況下進行訴訟的許可，則除非有其他非版權擁有人或專用特許持有人所能控制的特別情況，而該等情況並非為訟費方面的考慮，否則法院不得批出許可。

(4) 依據第(1)款加入作為被告人的版權擁有人或專用特許持有人，除非參與法律程序，否則無須對訴訟的任何訟費負上法律責任。

(5) 本條的條文不影響法院應版權擁有人或專用特許持有人的單獨申請而批予非正審濟助。

(6) 凡就侵犯版權提起訴訟，而版權擁有人及專用特許持有人不論是現在或過去就該訴訟(全部或部分)所關乎的侵犯版權同時具有訴訟權，則——

(a) 法院在評估損害賠償時須考慮——

(i) 特許的條款；及

(ii) 版權擁有人或專用特許持有人已就侵犯版權獲判給或可得到的金錢上的補救；

(b) 如法院已就侵犯版權向他們當中的另一方判給損害賠償，或已指示交出所得利潤予另一方，則法院不得指示交出所得利潤；及

(c) 如有交出所得利潤的指示，法院須在他們之間的協議的規限下按法院認為公正而將利潤分攤給他們，

不論版權擁有人或專用特許持有人是否同時是訴訟的一方，此等條文仍然適用。

(7) 版權擁有人在申請根據第 109 條(交付令)作出的命令之前，須通知與他同時具有權利的任何專用特許持有人；而法院可應專用特許持有人的申請，在顧及該特許的條款後根據第 109 條作出其認為合適的命令。

[*比照 1988 c. 48 s. 102 U.K.*]

侵犯精神權利的補救

114. 侵犯精神權利的補救

(1) 侵犯第 IV 分部(精神權利)所賦予的權利，可作為違反對具有該項權利的人所盡的法定責任而就該侵犯提起訴訟。

(2) In proceedings for infringement of the right conferred by section 92 (right to object to derogatory treatment of work) the court may, if it thinks it is an adequate remedy in the circumstances, grant an injunction on terms prohibiting the doing of any act unless a disclaimer is made, in such terms and in such manner as may be approved by the court, dissociating the author or director from the treatment of the work.

[*cf.* 1988 c. 48 s. 103 U.K.]

Presumptions

115. Presumptions relevant to literary, dramatic, musical and artistic works

(1) The following presumptions apply in proceedings brought by virtue of this Division with respect to a literary, dramatic, musical or artistic work.

(2) Where a name purporting to be that of the author appeared on copies of the work as published or on the work when it was made, the person whose name appeared is presumed, until the contrary is proved—

- (a) to be the author of the work;
- (b) to have made it in circumstances not falling within section 14(1), 182, 184 or 188 (works produced in course of employment, Government copyright, Legislative Council copyright or copyright of certain international organizations).

(3) In the case of a work alleged to be a work of joint authorship, subsection (2) applies in relation to each person alleged to be one of the authors.

(4) Where no name purporting to be that of the author appeared as mentioned in subsection (2) but a name purporting to be that of the publisher appeared on copies of the work as first published, the person whose name appeared is presumed, until the contrary is proved, to have been the owner of the copyright at the time of publication.

(5) If the author of the work is dead or the identity of the author cannot be ascertained by reasonable inquiry, it is presumed, in the absence of evidence to the contrary—

- (a) that the work is an original work; and
- (b) that the plaintiff's allegations as to what was the first publication of the work and as to the country of first publication are correct.

[*cf.* 1988 c. 48 s. 104 U.K.]

(2) 在就侵犯第92條(反對作品受貶損處理的權利)所賦予的權利而進行的法律程序中,法院如認為在當時情況下批出具有有關規定的條款的強制令是足夠的補救,即可批出該強制令;上述有關規定指規定除非有按該法院批准的條款及方式作出的卸責聲明,說明作者或導演與該作品的處理無涉,否則禁止作出任何作為。

[*比照* 1988 c. 48 s. 103 U.K.]

推定

115. 與文學作品、戲劇作品、音樂作品及藝術作品有關的推定

(1) 以下推定在憑藉本分部就文學作品、戲劇作品、音樂作品及藝術作品而提起的法律程序中適用。

(2) 凡看來屬作者的姓名或名稱在已發表的作品之上出現或在作品製作時在作品之上出現,則須推定姓名或名稱在已發表作品之上出現或在作品製作時在作品之上出現的人——

- (a) 是該作品的作者;
- (b) 是並非在第14(1)、182、184或188條(在受僱工作期間製作的作品、政府版權、立法局版權或某些國際組織的版權)所指的情況下製作該作品的,

直至相反證明成立為止。

(3) 就被指稱為合作作品的作品而言,第(2)款就每一名被指稱為作者之一的人而適用。

(4) 凡沒有如第(2)款提及般出現看來屬作者的姓名或名稱,但有看來屬發表人的姓名或名稱在首次發表的該作品之上出現,則須推定姓名或名稱如此出現的人是該作品在發表時的版權的擁有人,直至相反證明成立為止。

(5) 如作品的作者已死亡,或經合理查究後仍不能確定作者的身分,則在沒有相反證據的情況下,須推定——

- (a) 該作品是原本的作品;及
- (b) 原告人就甚麼是作品的首次發表和作出首次發表的所在國家的指稱均屬正確。

[*比照* 1988 c. 48 s. 104 U.K.]

116. Presumptions relevant to sound recordings, films and computer programs

(1) In proceedings brought by virtue of this Division with respect to a sound recording, where copies of the recording as issued or made available to the public bear a label or other mark stating—

- (a) that a named person was the owner of copyright in the recording at the date of issue or making available of the copies; or
- (b) that the recording was first published in a specified year or in a specified country,

the label or mark is admissible as evidence of the facts stated and is presumed to be correct until the contrary is proved.

(2) In proceedings brought by virtue of this Division with respect to a film, where copies of the film as issued or made available to the public bear a statement—

- (a) that a named person was the director or producer of the film;
- (b) that a named person was the principal director, the author of the screenplay, the author of the dialogue or the composer of music specifically created for and used in the film;
- (c) that a named person was the owner of copyright in the film at the date of issue or making available of the copies; or
- (d) that the film was first published in a specified year or in a specified country,

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

(3) In proceedings brought by virtue of this Division with respect to a computer program, where copies of the program are issued to the public in electronic form or made available to the public bearing a statement—

- (a) that a named person was the owner of copyright in the program at the date of issue or making available of the copies; or
- (b) that the program was first published in a specified country or that copies of it were first issued to the public in electronic form or made available to the public in a specified year,

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

(4) The above presumptions apply equally in proceedings relating to an infringement alleged to have occurred before the date on which the copies were issued or made available to the public.

(5) In proceedings brought by virtue of this Division with respect to a film, where the film as shown in public, broadcast or included in a cable programme service bears a statement—

116. 與聲音紀錄、影片及電腦程式有關的推定

(1) 如向公眾發放或提供的聲音紀錄的複製品附有標籤或其他標記，述明——

- (a) 在該複製品如此發放或提供的日期，某被指名的人是該聲音紀錄的版權的擁有人；或
- (b) 該聲音紀錄是在某指明年份或在某指明國家首次發表的，

則在憑藉本分部就該聲音紀錄而提起的法律程序中，該標籤或標記可獲接納為所述明事實的證據，且該標籤或標記須推定為正確的，直至相反證明成立為止。

(2) 如向公眾發放或提供的影片的複製品附有一項陳述，述明——

- (a) 某被指名的人是該影片的導演或製作人；
- (b) 某被指名的人是該影片的主要導演、劇本的作者、對白的作者或特別為該影片創作並用於該影片中的音樂的創作人；
- (c) 在該複製品如此發放或提供的日期，某被指名的人是該影片的版權的擁有人；或
- (d) 該影片是在某指明年份或在某指明國家首次發表的，

則在憑藉本分部就該影片而提起的法律程序中，該項陳述可獲接納為所述明事實的證據，且該項陳述須推定為正確的，直至相反證明成立為止。

(3) 如向公眾提供或以電子形式向公眾發放的電腦程式的複製品附有一項陳述，述明——

- (a) 在該複製品如此發放或提供的日期某被指名的人是該程式的版權的擁有人；或
- (b) 該程式是在某指明國家首次發表的，或該程式的複製品是在某指明年份首次向公眾提供或以電子形式向公眾發放的，

則在憑藉本分部就該電腦程式而提起的法律程序中，該項陳述可獲接納為所述明事實的證據，且該項陳述須推定為正確的，直至相反證明成立為止。

(4) 在關乎被指稱為已在該等複製品向公眾發放或提供的日期之前發生的侵犯權利的法律程序中，上述推定同樣適用。

(5) 如公開放映、廣播或包括在有線傳播節目服務內的影片附有一項陳述，述明——

- (a) that a named person was the director or producer of the film;
- (b) that a named person was the principal director of the film, the author of the screenplay, the author of the dialogue or the composer of music specifically created for and used in the film; or
- (c) that a named person was the owner of copyright in the film immediately after it was made,

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

This presumption applies equally in proceedings relating to an infringement alleged to have occurred before the date on which the film was shown in public, broadcast or included in a cable programme service.

(6) For the purposes of this section, a statement that a person was the director of a film is to be taken, unless a contrary indication appears, as meaning that he was the principal director of the film.

[*cf.* 1988 c. 48 s. 105 U.K.]

117. Presumptions relevant to works subject to Government copyright

In proceedings brought by virtue of this Division with respect to a literary, dramatic or musical work in which Government copyright subsists, where there appears on printed copies of the work a statement of the year in which the work was first published commercially, that statement is admissible as evidence of the fact stated and is presumed to be correct in the absence of evidence to the contrary.

[*cf.* 1988 c. 48 s. 106 U.K.]

Offences

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

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

- (a) makes for sale or hire;
- (b) imports into Hong Kong otherwise than for his private and domestic use;
- (c) exports from Hong Kong otherwise than for his private and domestic use;
- (d) possesses for the purpose of trade or business with a view to committing any act infringing the copyright;
- (e) for the purpose of trade or business—
 - (i) sells or lets for hire;

- (a) 某被指名的人是該影片的導演或製作人；
- (b) 某被指名的人是該影片的主要導演、劇本的作者、對白的作者或特別為該影片創作並用於該影片中的音樂的創作人；或
- (c) 某被指名的人在緊接該影片製作完成後是該影片的版權的擁有人，

則在憑藉本分部就該影片而提起的法律程序中，該項陳述可獲接納為所述明事實的證據，且該項陳述須推定為正確的，直至相反證明成立為止。

在關乎被指稱為已在該影片公開發映、廣播或包括在有線傳播節目服務內的日期之前發生的侵犯權利的法律程序中，此項推定同樣適用。

(6) 就本條而言，任何指明某人為某影片的導演的陳述，除非出現相反表示，否則即當作為意指該人是該影片的主要導演。

[*比照* 1988 c. 48 s. 105 U.K.]

117. 與有政府版權的作品有關的推定

如文學作品、戲劇作品或音樂作品有政府版權存在，並且該作品的已刊印複製品上附有一項陳述，述明該作品作首次商業發表的年份，則在憑藉本分部就該作品而提起的法律程序中，該項陳述可獲接納為所述明事實的證據，並且在沒有相反證據的情況下，該項陳述須推定為正確的。

[*比照* 1988 c. 48 s. 106 U.K.]

罪行

118. 製作侵犯版權物品等或進行侵犯版權物品等交易的刑事責任

(1) 任何人如在沒有有關版權擁有人的特許下，就版權作品的侵犯版權複製品作出下列事情，即屬犯罪——

- (a) 製作該複製品作出售或出租之用；
- (b) 將該複製品輸入香港，但並非供他私人和家居使用；
- (c) 將該複製品輸出香港，但並非供他私人和家居使用；
- (d) 為交易或業務的目的而管有該複製品，以期作出任何侵犯版權的作為；
- (e) 為交易或業務的目的——
 - (i) 出售或出租該複製品；

(ii) offers or exposes for sale or hire;
 (iii) exhibits in public; or
 (iv) distributes; or
 (f) distributes otherwise than for the purpose of trade or business to such an extent as to affect prejudicially the owner of the copyright, an infringing copy of a copyright work.

(2) Subsections (1)(b) and (c) and (4)(b) and (c) do not apply to an article in transit.

(3) It is a defence for the person charged with an offence under subsection (1), to prove that he did not know and had no reason to believe that the copy in question was an infringing copy of the copyright work.

(4) A person commits an offence if he—

- (a) makes;
- (b) imports into Hong Kong;
- (c) exports from Hong Kong;
- (d) possesses; or
- (e) sells or lets for hire, or offers or exposes for sale or hire,

an article specifically designed or adapted for making copies of a particular copyright work which article is used or intended to be used to make infringing copies of the copyright work for sale or hire or for use for the purpose of trade or business.

(5) It is a defence for the person charged with an offence under subsection (4) to prove that he did not know and had no reason to believe that the article was used or was intended to be used to make the infringing copies for sale or hire or for use for the purpose of trade or business.

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

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

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

(7) In determining whether the person charged has proved under subsection (6) that he had no reason to believe that the copy in question was an infringing copy of the work, the court may have regard to, including but not limited to, the following—

- (a) whether he had made enquiries with a relevant trade body in respect of that category of work;

- (ii) 要約出售或要約出租該複製品，或為出售或出租而展示該複製品；
- (iii) 公開展覽該複製品；或
- (iv) 分發該複製品；或

(f) 並非為交易或業務的目的而分發該複製品，達到損害版權的擁有人的權利的程度。

(2) 第(1)(b)及(c)及(4)(b)及(c)款並不適用於過境物品。

(3) 任何被控第(1)款所訂罪行的人如證明他不知道亦無理由相信有關的複製品是版權作品的侵犯版權複製品，即可以此作為免責辯護。

(4) 如任何人——

- (a) 製作任何物品；
- (b) 將任何物品輸入香港；
- (c) 將任何物品輸出香港；
- (d) 管有任何物品；或
- (e) 出售、出租、要約出售或要約出租任何物品，或為出售或出租而展示任何物品，

而該物品是經特定設計或改裝以供製作某版權作品的複製品，並且是用作或擬用作製作版權作品的侵犯版權複製品，以供出售或出租或用於交易或業務的目的，該人即屬犯罪。

(5) 任何被控第(4)款所訂罪行的人如證明他不知道亦無理由相信該物品是用作或擬用作製作侵犯版權複製品，以供出售或出租或用於交易或業務的目的，即可以此作為免責辯護。

(6) 如某版權作品的複製品僅憑藉第35(3)條而屬侵犯版權複製品，並且包括在第35(4)條之內，則就第(1)(b)及(3)款而言，任何就該版權作品的複製品而被控第(1)款所訂罪行的人如證明——

- (a) 他已作出合理查究足以使他自己信納有關的複製品並非該作品的侵犯版權複製品；
- (b) 他基於合理理由而信納在有關個案的情況下該複製品並非侵犯版權複製品；
- (c) 沒有其他本會致使他合理地懷疑該複製品是侵犯版權複製品的情況，

則他已證明他沒有理由相信有關的複製品是該版權作品的侵犯版權複製品。

(7) 法院在裁定被控人是否已根據第(6)款證明他沒有理由相信有關的複製品是該作品的侵犯版權複製品時，可顧及的因素包括(但不限於)以下事項——

- (a) 他是否已就有關類別作品向有關的行業團體作出查究；

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

(8) A person commits an offence if he has in his possession an article knowing or having reason to believe that it is used or is intended to be used to make infringing copies of any copyright work for sale or hire or for use for the purpose of trade or business.

(9) Sections 115 to 117 (presumptions as to various matters connected with copyright) do not apply to proceedings for an offence under this section.
[cf. 1988 c. 48 s. 107 U.K.]

119. Penalties for offences under section 118

(1) A person who commits an offence under section 118(1) is liable on conviction to a fine at level 5 in respect of each infringing copy and to imprisonment for 4 years.

(2) A person who commits an offence under section 118(4) or (8) is liable on conviction on indictment to a fine of \$500,000 and to imprisonment for 8 years.

120. Making infringing copies outside Hong Kong, etc.

(1) A person commits an offence if he makes outside Hong Kong, for export to Hong Kong otherwise than for his private and domestic use, any article that he knows would, if it were made in Hong Kong, constitute an infringing copy of a copyright work.

(2) A person commits an offence if he makes outside Hong Kong an article specifically designed or adapted for making copies of a particular copyright work knowing or having reason to believe that it is to be used or is intended to be used in Hong Kong for making an infringing copy of the copyright work for sale or hire or for use for the purpose of trade or business.

- (b) 他是否已給予通知促請有關的版權擁有人或專用特許持有人注意他在輸入及出售該作品的複製品方面的權益；
- (c) 他是否已遵從就有關類別作品的供應而可能存在的實務守則；
- (d) 對被控人作出的該等查究的回應(如有的話)是否合理和及時；
- (e) 他是否已獲得提供有關版權擁有人或專用特許持有人(視乎屬何情況而定)之姓名、地址及其聯絡之詳細資料；
- (f) 他是否已獲得有關作品首次發表之日期；
- (g) 他是否已獲提供任何有關專用特許之證明。

(8) 任何人如管有任何物品，而他知道或有理由相信該物品是用作或擬用作製作任何版權作品的侵犯版權複製品，以供出售或出租或用於交易或業務的目的，該人即屬犯罪。

(9) 第 115 至 117 條(與版權有關的各種事宜的推定)不適用於就本條所訂罪行而提起的法律程序。

[比照 1988 c. 48 s. 107 U.K.]

119. 第 118 條所訂罪行的罰則

(1) 任何人犯第 118(1) 條所訂罪行，一經定罪，可就每份侵犯版權複製品處第 5 級罰款及監禁 4 年。

(2) 任何人犯第 118(4) 或 (8) 條所訂罪行，一經循公訴程序定罪，可處罰款 \$500,000 及監禁 8 年。

120. 在香港以外地方等製作侵犯版權複製品

(1) 任何人如在香港以外地方製作任何輸往香港而非供他私人和家居使用的物品，而他知道該物品假使在香港製作即會構成版權作品的侵犯版權複製品，該人即屬犯罪。

(2) 任何人如在香港以外地方製作經特定設計或改裝以供製作屬某版權作品的複製品的物品，而他知道或有理由相信該物品將會在香港用作或擬在香港用作製作該版權作品的侵犯版權複製品，以供出售或出租或用於交易或業務的目的，該人即屬犯罪。

(3) A person commits an offence if he makes outside Hong Kong or exports from Hong Kong an article specifically designed or adapted for making copies of a particular copyright work, knowing or having reason to believe that—

- (a) the article is to be used or is intended to be used outside Hong Kong for making another article for export to Hong Kong; and
- (b) the latter article mentioned in paragraph (a) would, if it were made in Hong Kong, constitute an infringing copy of the copyright work.

(4) A person who, in Hong Kong or elsewhere, aids, abets, counsels or procures the commission by another person of an offence under subsection (1), (2) or (3) commits that offence as a principal.

(5) The offences under subsections (1), (2) and (3) are without prejudice to the offences under section 118.

(6) A person who commits an offence under subsection (1), (2) or (3) is liable on conviction on indictment to a fine of \$500,000 and to imprisonment for 8 years.

(7) For the purpose of this section, “article” (物品) does not include an article in transit.

(8) Sections 115 to 117 (presumptions as to various matters connected with copyright) do not apply to proceedings for an offence under this section.

Supplementary

121. Affidavit evidence

(1) An affidavit which purports to have been made by or on behalf of the owner of a copyright work and which states—

- (a) the date and place that the work was made or first published;
- (b) the name, domicile, residence or right of abode of the author of the work;
- (c) the name of the owner of the work;
- (d) that copyright subsists in the work; and
- (e) that a copy of the work exhibited to the affidavit is a true copy of the work,

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

(2) Without prejudice to subsection (1), an affidavit which purports to have been made by or on behalf of the owner of a copyright work and which—

- (a) states—
 - (i) that the copyright work has been registered with a Copyright Register prescribed under subsection (14); and
 - (ii) that copyright subsists in the work; and

(3) 任何人如在香港以外地方製作或從香港輸出經特定設計或改裝以供製作屬某版權作品的複製品的物品，而他知道或有理由相信——

- (a) 該物品將會或擬在香港以外地方用作製作輸往香港的另一物品；及
- (b) (a)段提及的另一物品假使在香港製作，即會構成該版權作品的侵犯版權複製品，

該人即屬犯罪。

(4) 任何人如在香港或其他地方協助、教唆、慫使或促致另一人犯第(1)、(2)或(3)款所訂罪行，即屬以主犯身分犯該罪。

(5) 第(1)、(2)及(3)款所訂罪行並不損害第118條所訂罪行。

(6) 任何人犯第(1)、(2)或(3)款所訂罪行，一經定罪，可處罰款\$500,000及監禁8年。

(7) 就本條而言，“物品”(article)不包括過境物品。

(8) 第115至117條(就與版權有關連的各種事宜而作出的推定)不適用於就本條所訂罪行而進行的法律程序。

補充條文

121. 誓章證據

(1) 任何誓章如看來是由版權作品的擁有人作出或由他人代其作出的，並且述明——

- (a) 該作品於何日期和地點製作或首次發表；
- (b) 該作品的作者的姓名、居籍、住處或所具有的居留權；
- (c) 該作品的擁有人的姓名或名稱；
- (d) 該作品有版權存在；及
- (e) 附於誓章作為證物的該作品的複製品是該作品的真確複製品，

則在符合第(4)款所載的條件下，該誓章即須在根據本條例進行的任何法律程序中獲接納為證據而無須進一步證明。

(2) 在不損害第(1)款的原則下，任何誓章如看來是由版權作品的擁有人作出或由他人代其作出的，並且——

- (a) 述明——
 - (i) 該版權作品已在根據第(14)款訂明的版權註冊紀錄冊中註冊；及
 - (ii) 該作品有版權存在；及

- (iii) the name of the owner of the work; and
- (b) has exhibited to it a copy of the certificate of registration of the work issued by the authority in charge of the Copyright Register certified to be a true copy by a person specified in subsection (4)(a),

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

(3) The court before whom an affidavit which complies with the conditions in subsection (4) is produced under subsection (1) or (2) shall presume, in the absence of evidence to the contrary—

- (a) that the statements made in the affidavit are true; and
- (b) that it was made and authenticated in accordance with subsection (4).

(4) An affidavit may be tendered in evidence under subsection (1) or (2) if—

- (a) it is made on oath—
 - (i) before a solicitor or a commissioner as defined in the Oaths and Declarations Ordinance (Cap. 11), if it is made in Hong Kong; or
 - (ii) before a notary public, if it is made outside Hong Kong;
- (b) it is authenticated, so far as relates to the making thereof, by the signature of the solicitor, commissioner or notary public before whom it is made;
- (c) it contains a declaration by the deponent to the effect that it is true to the best of his knowledge and belief; and
- (d) subject to subsection (6), not less than 10 days before the commencement of the hearing at which the affidavit is tendered in evidence, a copy of the affidavit is served, by or on behalf of the prosecution or plaintiff, on each of the defendants.

(5) Notwithstanding that an affidavit is admissible as evidence by virtue of this section, a defendant or his solicitor may, within 3 days from the service of the copy of the affidavit, serve a notice requiring the attendance of the deponent to the affidavit in court.

(6) The parties may agree before the hearing that the requirements of subsection (4)(d) may be dispensed with.

(7) If an affidavit tendered in evidence under subsection (1) or (2)—

- (a) is made in a language other than English or Chinese, it must be accompanied by an English or Chinese translation thereof and, unless otherwise agreed by or on behalf of the prosecutor or plaintiff and defendant (or, if more than one, all the defendants), the translation must be certified by the court translator;

(iii) 該作品的擁有人的姓名或名稱；及

(b) 附有由掌管版權註冊紀錄冊的有關當局發出的該作品的註冊證明書的副本作為證物，而該副本經第(4)(a)款指明的人核證為真確副本，則在符合第(4)款所載的條件下，該誓章即須在根據本條例進行的任何法律程序中獲接納為證據而無須進一步證明。

(3) 凡有某誓章符合第(4)款的條件並根據第(1)或(2)款向法院出示，則在沒有相反證據的情況下，法院須推定——

- (a) 該誓章內的陳述是真實的；及
- (b) 該誓章是按照第(4)款作出和認證的。

(4) 如符合下述條件，誓章即可根據第(1)或(2)款提交作為證據——

- (a) 該誓章——
 - (i) (如是在香港作出的) 是在律師或《宣誓及聲明條例》(第11章)所界定的監督員面前宣誓作出的；或
 - (ii) (如是在香港以外地方作出的) 是在公證人面前宣誓作出的；
- (b) 如該誓章是在律師、監督員或公證人面前作出的，須由該公證人或領事館官員簽署認證，證明該誓章是如此作出的；
- (c) 該誓章載有宣誓人的聲明，以表明盡其所知所信，該誓章的內容是真實的；及
- (d) 除第(6)款另有規定外，如該誓章於某項聆訊中作為證據提交，則該誓章的副本須在該聆訊展開前的10日之前，由控方或原告人送達或代控方或原告人送達每一名被告人。

(5) 儘管誓章憑藉本條而可獲接納為證據，任何被告人或其律師可在獲送達誓章的副本的3天內送達要求誓章的宣誓人出庭的通知。

(6) 各方可在聆訊前同意免除第(4)(d)款的規定。

(7) 根據第(1)或(2)款而提交作為證據的誓章——

- (a) 如既非用中文亦非用英文寫成，必須附有中文或英文譯本，而除非檢控人或原告人及被告人(或如多於一名被告人，則指全部被告人)同意或由他人代其同意，否則該譯本必須由法院的翻譯人員核證；

- (b) refers to any other document as an exhibit, the copy served on any other party to the proceedings under subsection (4)(d) must be accompanied by a copy of that document or by such information as may be necessary in order to enable the party on whom it is served to inspect that document or a copy thereof.
- (8) Without prejudice to subsection (5)—
- (a) the party by whom or on whose behalf the affidavit was served may call the deponent to give evidence; and
- (b) the court may of its own motion or, if the defendant who has served a notice under subsection (5) satisfies the court that the subsistence or ownership of the copyright is genuinely in issue, either before or during the hearing, require the deponent to attend before the court and give evidence.
- (9) Without prejudice to subsection (8)(a), a deponent of an affidavit which is admissible under this section shall attend before the court and give evidence if, and only if, the court so requires under subsection (8)(b).
- (10) So much of an affidavit as is admitted in evidence by virtue of this section is, unless the court otherwise directs, to be read aloud at the hearing and where the court so directs an account is to be given orally of so much of any affidavit as is not read aloud.
- (11) Any document or object referred to as an exhibit and identified in an affidavit admitted in evidence under this section is treated as if it had been produced as an exhibit and identified in court by the deponent.
- (12) A document required by this section to be served on any person may be served—
- (a) by delivering it to him or to his solicitor; or
- (b) in the case of a body corporate, by delivering it to the secretary or clerk of the body at its registered or principal office or by sending it by registered post addressed to the secretary or clerk of that body at that office.
- (13) Without prejudice to the powers of the court to award costs, the court may award costs against a defendant who—
- (a) was served with an affidavit described in subsection (1) or (2);
- (b) by himself or through his solicitor served a notice under subsection (5); and
- (c) was subsequently convicted of the relevant offence or found liable for the infringement, as the case may be.
- (14) In awarding awards under subsection (13), the court shall have regard to the actual costs incurred by the prosecution or plaintiff as a result of the notice under subsection (5) served by the defendant and the court may award costs under subsection (13) exceeding the limit of costs, if any, which that court may award.

- (b) 如提述任何其他文件為證物，則根據第(4)(d)款送達法律程序的任何一方的誓章的副本須附有該文件的副本，或附有必需的資料，使獲送達該誓章的一方能夠查閱該文件或其副本。
- (8) 在不損害第(5)款的原則下——
- (a) 送達誓章或由他人代為送達誓章的一方可傳召宣誓人作供；及
- (b) 根據第(5)款送達通知的被告人如令法院信納版權的存在或擁有權確實受爭議，則法院在聆訊前或在聆訊進行之時可要求宣誓人到法院席前作供，法院亦可自行在聆訊前或在聆訊進行之時要求宣誓人到法院席前作供。
- (9) 在不損害第(8)(a)款的原則下，根據本條而可獲接納為證據的誓章的宣誓人，只有在法院根據第(8)(b)款提出要求下才須到法院席前作供。
- (10) 除非法院另有指示，否則憑藉本條獲接納為證據的誓章須在聆訊時以高聲宣讀，凡法院指示無須高聲宣讀，則須就未經高聲宣讀的部分以口頭作出交代。
- (11) 在根據本條獲接納為證據的誓章中被稱為證物和被識別的任何文件或物體，均須視為猶如由宣誓人在法院上出示為證物和予以識別的一樣。
- (12) 本條規定須送達任何人的文件可藉以下方式送達——
- (a) 交付該人或其律師；或
- (b) 如文件須送達法人團體，則可於其註冊辦事處或主要辦事處交付其秘書或書記，或以致予其秘書或書記的掛號郵遞的方式寄往該地址。
- (13) 在不損害法院判給訟費的權力的原則下，如被告人有以下情況，法院可判他須支付訟費——
- (a) 他獲送達第(1)或(2)款所描述的誓章；
- (b) 他根據第(5)款親自或通過其律師送達通知；及
- (c) 他其後就有關罪行被定罪或被裁斷須負上侵犯版權的法律責任(視屬何情況而定)。
- (14) 法院在根據第(13)款作出判給時，須顧及控方或原告人因被告人根據第(5)款送達的通知而招致的實際訟費，法院並可根據第(13)款判給超逾法院可判給的訟費限額(如有的話)的訟費。

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

(16) The Secretary for Trade and Industry may by regulation prescribe the Copyright Registers for the purpose of subsection (2).

(17) In this section, “court” (法院) includes a magistrate.

122. Powers of investigating officers

(1) An authorized officer may—

- (a) (i) subject to section 123, 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
- (iii) stop and search any vehicle (other than a military vehicle), in which he reasonably suspects that there is—
- (A) an article which is an infringing copy of a copyright work;
- (B) an article specifically designed or adapted for making copies of a particular copyright work which article is used or intended to be used for making infringing copies of any such work; or
- (C) anything which appears to him to be or to contain, or to be likely to be or to contain, evidence of an offence under this Part; and
- (b) seize, remove or detain—
- (i) any article which appears to him to be an infringing copy of a copyright work or an article specifically designed or adapted for making copies of a particular copyright work which appears to him to be intended for use for making infringing copies of any such work;
- (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 this Part; and
- (iii) any vessel, aircraft or vehicle (other than a ship of war or a military aircraft or vehicle) which he reasonably suspects to be or, has been used in connection with an offence under this Part.

(2) An authorized officer may—

- (a) break open any outer or inner door of any place which he is empowered or authorized by this Part to enter and search;
- (b) forcibly board any vessel, aircraft or vehicle which he is empowered by this Part to stop, board and search;

(15) 就第 (1)(e) 款而言，如有關作品是電腦程序（不論該程序屬源代碼或目標代碼形式），則屬只目標代碼形式的電腦程序的複製品亦可視為該程序的真確複製品。

(16) 工商司可藉規例為施行第 (2) 款訂明版權註冊紀錄冊。

(17) 在本條中，“法院” (court) 包括裁判官。

122. 調查人員的權力

(1) 獲授權人員——

- (a) (i) 可在符合第 123 條的規定下進入和搜查任何處所或地方；
- (ii) 可截停、登上和搜查任何船隻（戰艦除外）或航空器（軍用航空器除外）；或
- (iii) 可截停和搜查任何車輛（軍用車輛除外），但他須有合理理由懷疑在該處所、地方、船隻、航空器或車輛中有——
- (A) 任何是版權作品的侵犯版權複製品的物品；
- (B) 任何經特定設計或改裝以供製作某版權作品的複製品並且是用作或擬用作製作該作品的侵犯版權複製品的物品；或
- (C) 任何他覺得是或相當可能是本部所訂罪行的證據或任何他覺得是包含或相當可能包含該證據的東西；及
- (b) 可檢取、移走或扣留——
- (i) 任何他覺得是版權作品的侵犯版權複製品的物品，或任何經特定設計或改裝以供製作某版權作品的複製品並且他覺得是擬用作製作該作品的侵犯版權複製品的物品；
- (ii) 任何他覺得是或相當可能是本部所訂罪行的證據或任何他覺得是包含或相當可能包含該證據的東西；及
- (iii) 任何他有合理理由懷疑是或曾經在與本部所訂罪行有關連的情況下使用的船隻、航空器或車輛（戰艦或軍用航空器或軍用車輛除外）。

(2) 獲授權人員可——

- (a) 破啟他獲本部賦權或授權進入和搜查的地方的外門或內門；
- (b) 強行登上他獲本部賦權截停、登上和搜查的船隻、航空器或車輛；

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

123. Restrictions on the entry and search of premises

(1) An authorized officer shall not enter and search any premises unless—

- (a) a magistrate has issued a warrant under subsection (2); or
- (b) the Commissioner has given an authorization under subsection (3).

(2) A magistrate may, if he is satisfied by information on oath that there are reasonable grounds for suspecting that there is in any premises 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 premises.

(3) The Commissioner may, if he is satisfied that—

- (a) there is reasonable ground for suspecting that there is in any premises any article or thing which may be seized, removed or detained under section 122(1)(b); and
- (b) it would not be reasonably practicable to obtain a warrant from a magistrate under subsection (2),

authorize in writing an authorized officer to enter and search the premises.

(4) An authorized officer authorized under subsection (2) or (3) to enter and search any premises may call upon any authorized officer to assist him in entering and searching the premises.

124. Obstruction of investigating 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; or

- (c) 強行移走妨礙他行使本部授予他的權力的人或東西；
- (d) 扣留他在獲本部賦權或授權搜查的地方內發現的任何人，直至該地方已搜查完畢為止；
- (e) 防止任何人接近或登上他獲本部賦權截停、登上和搜查的船隻、航空器或車輛，直至該船隻、航空器或車輛已搜查完畢為止。

123. 進入和搜查處所的限制

(1) 除非——

- (a) 裁判官已根據第(2)款發出手令；或
- (b) 總監已根據第(3)款給予授權，

否則獲授權人員不得進入和搜查任何處所。

(2) 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處所內有根據第122(1)(b)條可予檢取、移走或扣留的物品或東西，即可發出手令授權獲授權人員進入和搜查該處所。

(3) 總監如信納有合理理由懷疑——

- (a) 任何處所內有根據第122(1)(b)條可予檢取、移走或扣留的物品或東西；及
- (b) 根據第(2)款自裁判官取得手令不會屬合理地切實可行，

即可以書面授權獲授權人員進入和搜查該處所。

(4) 任何獲根據第(2)或(3)款授權進入和搜查處所的獲授權人員，可召請任何獲授權人員協助他進入和搜查該處所。

124. 妨礙調查人員

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

- (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,

is guilty of an offence and is liable on conviction to a fine at level 4 and to imprisonment for 3 months.

(2) Any person who, when required to give information to an authorized officer in the exercise of his powers or the performance of his duties under this Ordinance, knowingly gives false or misleading information to any such authorized officer is guilty of an offence and is liable on conviction to a fine at level 4 and to imprisonment for 3 months.

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

125. 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 shown to have been committed with the consent or connivance of, or to be attributable to any act on the part of, any director, 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.

126. Disclosure of information, etc.

(1) Where any article seized or detained under section 122 is, or is reasonably suspected by the Commissioner to be—

- (a) an infringing copy of a copyright work; or
- (b) an article specifically designed or adapted for making copies of a particular copyright work which has been used, or is intended to be used, for the making of infringing copies of any such work,

- (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他的權力或執行他的職責的目的而可合理要求給予的，

即屬犯罪，一經定罪，可處第4級罰款及監禁3個月。

(2) 任何人當被要求向根據本條例行使其權力或執行其職責的獲授權人員提供資料時，如明知而向該獲授權人員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3個月。

(3) 本條並不要求任何人提供可導致他自己入罪的資料。

125. 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的罪行，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，則上述的人及該法人團體均屬犯該罪行。

(2) 凡任何法人團體的事務是由其成員管理的，而任何成員在與其管理職能相關連的情況下作出某作為，第(1)款即就該作為適用，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，則該其他合夥人或與該合夥的管理有關的人即屬犯相同罪行。

126. 披露資料等

(1) 根據第122條被檢取或扣留的任何物品如屬下列物品，或如總監有合理理由懷疑該被檢取或扣留的物品屬下列物品——

- (a) 版權作品的侵犯版權複製品；或
- (b) 經特定設計或改裝以供製作某版權作品的複製品並曾用作或擬用作製作任何該等作品的侵犯版權複製品的物品，

the Commissioner shall, wherever reasonably practicable, notify the owner of the copyright in question or his authorized agent of the seizure or detention, as the case may be.

(2) In the circumstances specified in subsection (1), the Commissioner may disclose to the owner of the copyright or to his authorized agent—

- (a) the time, and the address or place, of seizure or detention of the article;
- (b) the name and address of the person from whom the article has been seized or detained;
- (c) the nature and quantity of articles seized or detained;
- (d) any statement made to the Commissioner or an authorized officer by the person in connection with the seizure or detention, either with the prior consent in writing of that person or without such consent where the person is dead or cannot after reasonable enquiries by the Commissioner as to his whereabouts be found by the Commissioner; and
- (e) any other information or document relating to the article seized or detained which the Commissioner thinks fit to disclose.

(3) The owner of the copyright or his authorized agent—

- (a) where he seeks disclosure of any information or document that is not referred to in subsection (2); or
- (b) where information or a document that is referred to in subsection (2) is not disclosed by the Commissioner,

may apply to the High Court for an order requiring the Commissioner to disclose such information or document and the High Court may on such an application make such order for disclosure as it thinks fit.

(4) An application under subsection (3) may be begun by motion with previous notice to the Commissioner.

127. Protection of informers in criminal proceedings

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

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

128. Inspection of articles, release of samples, etc.

(1) Where an article seized or detained under section 122 is, or is reasonably suspected by the Commissioner to be—

- (a) an infringing copy of a copyright work; or

則總監須在合理地切實可行範圍內將檢取或扣留一事(視屬何情況而定)通知有關版權的擁有人或其獲授權代理人。

(2) 在第(1)款所指明的情況下，總監可向該版權的擁有人或其獲授權代理人披露以下資料——

- (a) 該物品於何時間、地址或地點被檢取或扣留；
- (b) 如該物品是自某人處檢取或扣留的，該人的姓名或名稱及地址；
- (c) 被檢取或扣留的物品的性質及數量；
- (d) 該人就該項檢取或扣留而向總監或任何獲授權人員所作的任何陳述，但須事先得到該人的書面同意，如該人已死亡或總監在合理地查究該人的所在後仍未能找到該人，則不須事先得到該人的書面同意；及
- (e) 關乎被檢取或扣留的物品，並且是總監認為適宜披露的任何其他資料或文件。

(3) 凡——

- (a) 該版權的擁有人或其獲授權代理人尋求披露並沒有在第(2)款中提述的任何資料或文件；或
- (b) 總監並沒有披露在第(2)款中提述的資料或文件，

該擁有人或其獲授權代理人即可向高等法院申請一項命令，規定總監披露該等資料或文件，而高等法院則可應該申請而作出其認為合適的命令以規定作出披露。

(4) 根據第(3)款提出的申請，可在事先給予總監通知的情況下藉動議而開始進行。

127. 對在刑事法律程序中的告發人的保障

(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名稱或身分和所提供的資料，不得在根據本部進行的刑事法律程序中披露。

(2) 法院可為防止任何該等披露而作出任何有需要的命令和採取任何有需要的程序。

128. 檢查物品、發還樣本等

(1) 根據第122條自某人處檢取或扣留的物品如屬下列物品，或如總監有合理理由懷疑該被檢取或扣留的物品屬下列物品——

- (a) 版權作品的侵犯版權複製品；或

(b) an article specifically designed or adapted for making copies of a particular copyright work which has been used, or is intended to be used, for the making of infringing copies of any such work, the Commissioner or an authorized officer may give the owner of the copyright work in question or his authorized agent or the person from whom the article was seized sufficient opportunity to inspect the article for the purposes of ascertaining whether the article is an infringing copy of the copyright work or is an article specifically designed or adapted for making infringing copies of the copyright work.

(2) Where more than one article is seized or detained under section 122, the Commissioner or an authorized officer may permit the owner of the copyright or his authorized agent or the person from whom the articles were seized or detained to remove samples of the seized or detained articles if the Commissioner or authorized officer considers it necessary for the purpose of ascertaining whether the articles are infringing copies of the copyright work or are articles specifically designed or adapted for making copies of the copyright work on condition that the owner or agent or person, as the case may be, gives the Commissioner or authorized officer the requisite undertakings.

(3) For the purposes of subsection (2), the requisite undertakings are undertakings in writing that the person giving the undertaking will—

- (a) return the samples to the Commissioner or authorized officer at a specified time that is satisfactory to the Commissioner or authorized officer; and
- (b) take reasonable care to prevent unnecessary damage to the samples.

(4) If the Commissioner or an authorized officer permits the inspection of any seized or detained article, or the removal of a sample, by the copyright owner or his agent or the person from whom the article was seized in accordance with this section, the Government is not liable to the person from whom the article was seized or detained for any loss or damage suffered by him arising out of—

- (a) damage to any article incurred during the inspection; or
- (b) anything done by the copyright owner or any other person to, or in relation to, a sample removed by the copyright owner, his agent or the person or any use made by the owner or the person of such sample.

129. Multilateral co-operation

The Commissioner may, for the purpose of promoting multi-lateral 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—

(b) 經特定設計或改裝以供製作某版權作品的複製品並曾用作或擬用作製作任何該等作品的侵犯版權複製品的物品，總監或獲授權人員可給予有關的版權作品的擁有人或其獲授權代理人或該某人充分機會，為確定該物品是否版權作品的侵犯版權複製品或經特定設計或改裝以供製作版權作品的複製品而檢查該物品。

(2) 凡有多於一件物品根據第 122 條自某人處檢取或扣留，如總監或獲授權人員認為為確定該物品是否版權作品的侵犯版權複製品或為確定該物品是否屬經特定設計或改裝，用以製作版權作品的複製品的物品而有需要，則總監或獲授權人員可在版權的擁有人或其授權代理人或該某人（視屬何情況而定）給予總監或獲授權人員所需承諾的條件下，允許該版權的擁有人或其獲授權代理人或該某人移走被檢取或扣留的物品的樣本。

(3) 就第 (2) 款而言，所需的承諾指給予該承諾的人會作出以下事情的書面承諾——

- (a) 在總監或獲授權人員認為滿意的指明時間，將樣本交還總監或獲授權人員；及
- (b) 以合理謹慎防止對樣本造成不必要的損害。

(4) 凡物品自某人處檢取或扣留，如總監或任何獲授權人員允許版權擁有人或其代理人或該某人按照本條檢查任何該等物品，或移走任何樣本，則就由於以下所述而使該某人蒙受的任何損失或損害而言，政府無須對他負上任何法律責任——

- (a) 檢查時所招致對任何物品造成的損害；或
- (b) 版權擁有人或任何其他他人對版權擁有人、其代理人或該某人移走的任何樣本作出的任何事情或就該樣本作出的任何事情，或版權擁有人或該某人對該樣本作出的任何使用。

129. 多邊合作

為促進在保護知識產權權利方面的多邊合作，總監可向以下國家、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) 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.

130. Offences relating 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 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—
- (a) disclosing information under section 126(1) or (2) or under an order of the High Court under section 126(3);
 - (b) disclosing information under section 129;
 - (c) disclosing information under section 140(1) or under an order of the High Court made under section 140(2); or
 - (d) disclosing information under section 267(1) or under an order of the High Court made under section 267(2).
- (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.

131. Seized articles, etc. liable to forfeiture

- (1) Any article, vessel, aircraft, vehicle or thing seized or detained by an authorized officer under section 122 is liable to forfeiture in accordance with the following provisions whether or not any person has been charged of an offence under section 118 or 120.
- (2) The Commissioner shall, subject to subsection (3) and not later than 30 days beginning on the date of the seizure or detention of the article, vessel, aircraft, vehicle or thing serve notice of the seizure or detention on a person who was to the knowledge of the Commissioner at the time of, or immediately after seizure or detention, an owner of the article, vessel, aircraft, vehicle or thing.
- (3) Subsection (2) does not apply if the article, vessel, aircraft, vehicle or thing was seized or detained in the presence of—

- (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) 總監認為合適的國家、地區或地方。

130. 關乎披露資料的罪行

- (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——
- (a) 根據第 126(1) 或 (2) 條披露資料，或根據高等法院命令 (根據第 126(3) 條作出的) 披露資料；
 - (b) 根據第 129 條披露資料；
 - (c) 根據第 140(1) 條披露資料，或根據高等法院命令 (根據第 140(2) 條作出的) 披露資料；或
 - (d) 根據第 267(1) 條披露資料，或根據高等法院命令 (根據第 267(2) 條作出的) 披露資料，
- 則該人不屬犯第 (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。

131. 可沒收被檢取的物品等

- (1) 不論是否有人被控以第 118 或 120 條所訂罪行，任何獲授權人員根據第 122 條檢取或扣留的任何物品、船隻、航空器、車輛或東西均可按照以下條文予以沒收。
- (2) 總監須在不抵觸第 (3) 款的條文下和在自檢取或扣留有關物品、船隻、航空器、車輛或東西當日起計的 30 天內，向總監知悉在作出檢取或扣留時或向緊接作出檢取或扣留後是該物品、船隻、航空器、車輛或東西的擁有人的人，送達檢取通知書或扣留通知書。
- (3) 如該物品、船隻、航空器、車輛或東西是在下列的人在場時被檢取或扣留的，則第 (2) 款並不適用——

- (a) an owner, or an employee or agent of the owner, of the article, vessel, aircraft, vehicle or thing;
- (b) the person whose offence or suspected offence gave rise to the seizure or detention; or
- (c) in the case of a vessel, aircraft or vehicle, the master or person in charge.
- (4) A notice given under subsection (2) is deemed to have been duly served if—
- (a) it is delivered to the person on whom it is served;
- (b) it is sent by registered post addressed to such person at the place of residence or business of such person, if any, known to the Commissioner; or
- (c) where it cannot be served in accordance with paragraph (a) or (b), the notice is exhibited at the Customs and Excise Department, in a place to which the public have access, for a period of not less than 7 days commencing within 30 days from the date of the seizure or detention of the article, vessel, aircraft, vehicle or thing.
- (5) If an article, vessel, aircraft, vehicle or thing is liable to forfeiture under subsection (1), the owner or the authorized agent of the owner thereof, or a person who was in possession thereof at the time of seizure or detention, or a person who has a legal or equitable interest in it, may within 30 days beginning—
- (a) on the date of the seizure or detention; or
- (b) where the notice under subsection (2) is—
- (i) served by delivery to the person to be served, on the date of service; or
- (ii) sent by registered post, 2 days after the date of posting; or
- (iii) exhibited as described in subsection (4)(c), on the first day it is so exhibited,
- give notice in writing to the Commissioner of his full name and address for service in Hong Kong and claim that the article, vessel, aircraft, vehicle or thing is not liable to forfeiture.
- (6) A claimant may withdraw a notice of a claim at any time by notice in writing to the Commissioner.
- (7) Except where a person is charged with an offence under section 118 or 120 in connection with the seized or detained article, vessel, aircraft, vehicle or thing, if on the date of the expiration of the appropriate period of time specified in subsection (5) for the giving of a notice of claim no such notice has been given in writing to the Commissioner, the article, vessel, aircraft, vehicle or thing is forfeited forthwith to the Crown.

- (a) 該物品、船隻、航空器、車輛或東西的擁有人，或該擁有人的僱員或代理人；
- (b) 因犯罪行或涉嫌犯罪行而導致該物品、船隻、航空器、車輛或東西被檢取或扣留的人；或
- (c) 就船隻、航空器或車輛而言，則為船長或掌管人。
- (4) 根據第(2)款發出並須送達某人的通知書如——
- (a) 交付該人；
- (b) 以致予該人的掛號郵遞的方式寄往總監所知的該人的居住或業務地址(如有的話)；或
- (c) 在不能按照(a)或(b)段送達的情況下，在香港海關內的一處公眾可以到達的地方展示一段不少於7天的期間，該期間自檢取或扣留該物品、船隻、航空器、車輛或東西當日起計的30天內起計，
- 即當作已妥為送達。

(5) 如任何物品、船隻、航空器、車輛或東西根據第(1)款可予沒收，則該物品、船隻、航空器、車輛或東西的擁有人或該擁有人的獲授權代理人，或在作出檢取或扣留時管有該物品、船隻、航空器、車輛或東西的人，或對該物品、船隻、航空器、車輛或東西享有法律或衡平法上的權益的人，可在自以下日期起計的30天內——

- (a) 檢取或扣留當日；或
- (b) 如第(2)款所指的通知書——
- (i) 是以交付方式送達須予送達的人的，則指送達當日；或
- (ii) 是以掛號郵遞方式寄送的，則指郵寄當日後第2天；或
- (iii) 是按第(4)(c)款所述展示的，則指如此展示該通知書的首日，

向總監發出書面通知，述明其全名及接收送達文件的香港地址，並聲稱該物品、船隻、航空器、車輛或東西不可沒收。

(6) 申索人可隨時藉書面通知總監而撤回申索通知書。

(7) 如在第(5)款所指明的發出申索通知的適當期限屆滿當日，仍無人以書面向總監發出該通知，則該物品、船隻、航空器、車輛或東西隨即沒收歸予官方，但如有人就該被檢取或扣留的物品、船隻、航空器、車輛或東西而被控第118或120條所訂罪行，則屬例外。

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

Without prejudice to section 131, where a person is charged with an offence under section 118 or 120 the court may, if it is satisfied that any article, vessel, aircraft, vehicle or thing seized or detained by an authorized officer under section 122 in connection with the offence—

- (a) is an infringing copy of a copyright work;
- (b) is an article specifically designed or adapted for making copies of a particular copyright work which article has been used, or is intended to be used, for making infringing copies of any such work; or
- (c) has been used in connection with any offence under this Ordinance,

order that the article, vessel, aircraft, vehicle or thing be—

- (i) forfeited to the Crown;
- (ii) delivered up to the person who appears to the court to be the owner of the copyright concerned; or
- (iii) 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.

133. Determination of application for forfeiture

(1) Where a notice of claim is given under section 131, the Commissioner or an authorized officer shall apply to a magistrate, the District Court or the High Court for the forfeiture of the article, vessel, aircraft, vehicle or thing unless the Commissioner is satisfied, within a reasonable period after the receipt of the notice of claim, that, on the basis of the evidence of the case, the article, vessel, aircraft, vehicle or thing concerned should be delivered to the claimant.

(2) The Commissioner or authorized officer shall state in the application the name and address of the claimant.

(3) Where an application under subsection (1) is made to a magistrate, the magistrate shall issue a summons to the claimant, requiring him to appear before a magistrate upon the hearing of the application, and shall cause a copy of such summons to be served upon the Commissioner.

(4) Where an application under subsection (1) is made to the District Court or the High Court, it may be begun by motion.

132. 在有人被控的情況下物品等的處置

在不損害第 131 條的原則下，凡任何人被控第 118 或 120 條所訂罪行，法院如信納獲授權人員就該罪行根據第 122 條檢取或扣留的任何物品、船隻、航空器、車輛或東西——

- (a) 屬版權作品的侵犯版權複製品；
- (b) 屬經特定設計或改裝以供製作某版權作品的複製品並曾用作或擬用作製作任何該等作品的侵犯版權複製品的物品；或
- (c) 曾在與本條例所訂罪行有關連的情況下使用，

則不論被控人是否就被控罪行被定罪，法院亦可命令將該物品、船隻、航空器、車輛或東西——

- (i) 沒收歸予官方；
- (ii) 交付予法院覺得是有關版權的擁有人的人；或
- (iii) 以法院認為合適的其他方式處置。

133. 對沒收申請的裁定

(1) 凡申索通知書根據第 131 條發出，則總監或獲授權人員須向裁判官、地方法院或高等法院申請沒收有關物品、船隻、航空器、車輛或東西，但如總監在收到申索通知書後的合理期間內，基於該案的證據而信納該物品、船隻、航空器、車輛或東西應交付予有關申索人，則屬例外。

(2) 總監或獲授權人員須在申請書內述明申索人的姓名或名稱及地址。

(3) 凡有第 (1) 款所指的申請向裁判官提出，則該裁判官須向申索人發出傳票規定其在聆訊該申請時到裁判官席前，並須安排將該傳票文本送達總監。

(4) 凡向地方法院或高等法院提出第 (1) 款所指的申請，則該申請可藉動議開始。

(5) Where the claimant is the defendant in criminal proceedings under section 118 or 120 in connection with the seized or detained article, vessel, aircraft, vehicle or thing and there is no other claimant, on an application made in that behalf by the Commissioner, the court may hear the forfeiture application immediately following the criminal proceedings and for the purposes of a hearing under this subsection, any requirement in respect of the issue or service of a summons or any notice of the hearing under or by virtue of subsection (3) or (4), as the case may be, does not apply.

(6) Where there is more than one claimant and one of them is the defendant in criminal proceedings under section 118 or 120 in connection with the seized or detained article, vessel, aircraft, vehicle or thing, on an application made in that behalf by the Commissioner, the court may hear the forfeiture application immediately following the criminal proceedings.

(7) If, upon the hearing of an application under subsection (1), the claimant or some other person who, though not the claimant, was, or would have been, entitled to make a claim under section 131(5), appears before a court, the court shall hear the application.

(8) A court may, at the hearing of a forfeiture application, or at an adjourned hearing, hear a person—

- (a) who has not been served with a notice of seizure or detention and was not present when an article, vessel, aircraft, vehicle or thing, was seized or detained or whose identity was not known to the Commissioner at the time of, or immediately after, seizure or detention; and
- (b) who appears to the court to have a right to claim ownership of, or a legal or equitable interest in, the article, vessel, aircraft, vehicle or thing,

on his claim as to why it should not be forfeited.

(9) If, upon the hearing of an application under subsection (1), neither the claimant nor any person who, though not the claimant, was, or would have been, entitled to make a claim under section 131(5), appears before a court and the court is satisfied—

- (a) that the summons or the notice of the hearing (if any) required to be served under subsection (3) or (4), as the case may be, was served;
- (b) that a person at the address for service or a solicitor nominated to accept service on behalf of a claimant has refused to accept service of the summons or notice of the hearing referred to in paragraph (a); or
- (c) that the address for service given to the Commissioner is inadequate for the purpose of effecting service of the summons or the notice of hearing referred to in paragraph (a),

(5) 凡申索人是根據第 118 或 120 條就被檢取或扣留的物品、船隻、航空器、車輛或東西而提起的刑事法律程序中的被告人，而除該申索人外並無其他申索人，則法院可應總監就此而提出的申請，在緊接該刑事法律程序之後聆訊沒收申請，而為根據本款進行聆訊，任何在根據或憑藉第 (3) 或 (4) 款 (視屬何情況而定) 發出或送達傳票或任何聆訊通知書方面的規定，均不適用。

(6) 凡申索人超過一名而其中一人是根據第 118 或 120 條就檢取或扣留的物品、船隻、航空器、車輛或東西而提起的刑事法律程序中的被告人，則法院可應總監就此而提出的申請，在緊接該刑事法律程序之後聆訊沒收申請。

(7) 如在聆訊第 (1) 款所指的申請時，申索人或其他雖非申索人但卻屬曾有權或本應有權根據第 131(5) 條提出申索的人，到法院席前出席聆訊，法院須就該申請進行聆訊。

(8) 法院可在沒收申請的聆訊或在押後聆訊中，就下列人士所提出的關於為何不應將物品、船隻、航空器、車輛或東西沒收的聲稱，進行聆訊——

- (a) 未獲送達檢取通知書或扣留通知書，且在該物品、船隻、航空器、車輛或東西被檢取或扣留時並不在場的人，或在檢取或扣留時或在緊接檢取或扣留後，身分未為總監知悉的人；及
- (b) 法院覺得是有權利對該物品、船隻、航空器、車輛或東西提出擁有權的申索，或是對該物品、船隻、航空器、車輛或東西享有法律或衡平法上的權益的人。

(9) 如在聆訊第 (1) 款所指的申請時，申索人或其他雖非申索人但卻屬曾有權或本應有權根據第 131(5) 條提出申索的人，沒有到法院席前出席聆訊，而法院信納——

- (a) 根據第 (3) 或 (4) 款 (視屬何情況而定) 須予送達的傳票或聆訊通知書 (如有的話) 已經送達；
- (b) 在接收送達文件地址的人或被提名代申索人接收送達文件的律師，曾拒絕接收 (a) 段所提述的傳票或聆訊通知書；或
- (c) 就達成送達 (a) 段所提述的傳票或聆訊通知書而言，提供予總監的接收送達文件地址屬不齊全，

the court shall hear and determine the application without requiring further inquiry as to the whereabouts of the claimant.

(10) An application under subsection (1) to a magistrate is deemed to be a complaint for the purposes of section 8 of the Magistrates Ordinance (Cap. 227).

(11) Without prejudice to section 132, upon the hearing of an application under subsection (1) a court shall order that the article, vessel, aircraft, vehicle or thing, as the case may be, be forfeited to the Crown where the court is satisfied that it is liable to forfeiture, and, if appropriate, that—

- (a) the person who appears before the court fails to satisfy the court that he was, or would have been, entitled to make a claim under section 131(5) in respect of the seized or detained article, vessel, aircraft, vehicle or thing; and
- (b) no other person appears before the court and satisfies that he was, or would have been, entitled to make such claim.

(12) Without prejudice to section 132, upon the hearing of an application under subsection (1), in any case other than a case referred to in subsection (11) a court may, if it is satisfied—

- (a) that a person is, or would have been, entitled to make a claim under section 131(5) in respect of the seized or detained article, vessel, aircraft, vehicle or thing; and
- (b) that the article, vessel, aircraft, vehicle or thing is liable to forfeiture,

order that the article, vessel, aircraft, vehicle or thing—

- (i) be forfeited to the Crown;
- (ii) subject to subsection (13), be delivered to the claimant subject to any condition which it may specify in the order; or
- (iii) be disposed of in such manner and subject to such condition as it may specify in the order.

(13) The court shall not make an order under subsection (12)(ii) in respect of an article unless the claimant satisfies the court that the article is not an infringing copy of any copyright work or, as the case may be, is not an article specifically designed or adapted to make copies of any particular copyright work which article is used or is intended to be used, for making infringing copies of any such work.

(14) If, after a court has ordered that an article, vessel, aircraft, vehicle or thing be delivered to a person, that person cannot be found or refuses to accept it, the Commissioner may apply to a court which may—

- (a) order that the article, vessel, aircraft, vehicle or thing be forfeited to the Crown; or
- (b) make any such other order as the court considers fit in the circumstances.

則法院可無須就該申索人的下落再作查訊而就該申請進行聆訊和作出裁定。

(10) 根據第(1)款向裁判官提出的申請，就《裁判官條例》(第227章)第8條而言，須當作是一項申訴。

(11) 在不損害第132條的原則下，在聆訊第(1)款所指的申請時，凡法院信納有關物品、船隻、航空器、車輛或東西屬可予沒收者，並且有如下情況(如適當的話)，則法院須命令將該物品、船隻、航空器、車輛或東西沒收歸予官方——

- (a) 到法院席前的人不能令法院信納其曾有權或本應有權就被檢取或扣留的物品、船隻、航空器、車輛或東西根據第131(5)條提出申索；及
- (b) 並無其他人到法院席前並令法院信納其曾有權或本應有權提出該申索。

(12) 在不損害第132條的原則下，在聆訊第(1)款所指的申請時，法院如在任何情況(第(11)款提述的情況除外)下信納——

- (a) 某人屬有權或本應有權就被檢取或扣留的物品、船隻、航空器、車輛或東西根據第131(5)條提出申索者；及
- (b) 該物品、船隻、航空器、車輛或東西屬可予沒收者，

即可命令將該物品、船隻、航空器、車輛或東西——

- (i) 沒收歸予官方；
- (ii) 在符合第(13)款的規定下，並在符合法院於該命令所指明的任何條件下交付予申索人；或
- (iii) 在符合法院在該命令所指明的方式以及以法院在該命令所指明的條件下處置。

(13) 除非申索人令法院信納有關物品並非任何版權作品的侵犯版權複製品，或任何經特定設計或改裝以供製作某版權作品的複製品並且是用作或擬用作製作該版權作品的侵犯版權複製品的物品(視屬何情況而定)，否則法院不得根據第(12)(ii)款就該物品作出命令。

(14) 在法院已作出將物品、船隻、航空器、車輛或東西交付某人的命令後，如無法尋獲該人或該人拒絕接收該物品、船隻、航空器、車輛或東西，則總監可向法院提出申請，而法院則可——

- (a) 命令將該物品、船隻、航空器、車輛或東西沒收歸予官方；或
- (b) 作出法院認為就有關情況而言屬合適的任何其他命令。

(15) Unless the context otherwise requires, a reference to a court in this section or section 132 includes a reference to a magistrate.

(15) 除非在文意中另有規定，否則在本條或第 132 條中，凡提述法院，即包括提述裁判官。

134. Jurisdiction of District Court

- (1) The District Court may entertain proceedings under—
- (a) section 109 (order for delivery up of infringing copy or other article);
 - (b) section 111 (order as to disposal of infringing copy or other article); or
 - (c) section 113(7) (order as to exercise of rights by copyright owner where exclusive licensee has concurrent rights),

where the value of the infringing copies, or the alleged infringing copies, and other articles in question does not exceed the limit for actions in tort set out in section 32 of the District Court Ordinance (Cap. 336).

- (2) Nothing in this section affects the jurisdiction of the High Court.

[*cf. 1988 c. 48 s. 115 U.K.*]

134. 地方法院的司法管轄權

(1) 凡有關的侵犯版權複製品或指稱的侵犯版權複製品及有關的其他物品的價值不超出《地方法院條例》(第 336 章)第 32 條就侵權行為訴訟所列明的限額，則地方法院可受理根據以下條文進行的法律程序——

- (a) 第 109 條 (侵犯版權複製品或其他物品的交付令)；
- (b) 第 111 條 (處置侵犯版權複製品或其他物品的命令)；或
- (c) 第 113(7) 條 (就版權擁有人在專用特許持有人具有同時具有的權利時行使權利的命令)。

- (2) 本條並不影響高等法院的司法管轄權。

[*比照 1988 c. 48 s. 115 U.K.*]

DIVISION VII

PROCEEDINGS RELATING TO IMPORTATION OF INFRINGING ARTICLES

135. Definitions

In this Division—

“detention order” (扣留令) means an order made under section 137(1);

“right holder” (權利持有人) means the owner or exclusive licensee of the copyright that subsists in a work under this Ordinance.

136. Application for detention order

(1) A right holder may apply to the High Court for an order under section 137(1) where he has reasonable grounds for suspecting that the importation of an article that constitutes an infringing copy of the work in respect of which he is a right holder may take place.

(2) An application under subsection (1) may be made *ex parte* but with previous notice to the Commissioner.

(3) An application under subsection (1) must be in such form as is prescribed by rules of court and must be supported by an affidavit of the right holder which—

第 VII 分部

關乎輸入侵犯版權物品的法律程序

135. 定義

在本分部中——

“扣留令” (detention order) 指根據第 137(1) 條作出的命令；

“權利持有人” (right holder) 指根據本條例存在於作品的版權的擁有人或專用特許持有人。

136. 扣留令的申請

(1) 凡就某作品而言屬權利持有人的人，有合理理由懷疑屬構成該作品的侵犯版權複製品的物品可能被輸入，則該權利持有人可向高等法院申請根據第 137(1) 條作出的命令。

(2) 根據第 (1) 款提出的申請可以單方面提出，但須事先給予總監通知。

(3) 根據第 (1) 款提出的申請，必須採用法院規則訂明的格式，並須有權利持有人作出的誓章支持，而該誓章須——

- (a) states that at the time the application is made copyright subsists under this Part in the work in question;
- (b) states whether the deponent is the owner or the exclusive licensee of the copyright;
- (c) where the deponent purports to be the exclusive licensee, states the facts and exhibits such documents relied upon by the deponent to establish that he is the exclusive licensee;
- (d) states that a copy of the work exhibited to the affidavit is an authorized copy of the work;
- (e) states the grounds for the application, including the facts relied upon by the deponent as showing that the article in question is prima facie an infringing copy;
- (f) sets out a sufficiently detailed description of the article in question to make it readily recognizable by the Commissioner;
- (g) sets out particulars regarding the expected mode of transportation and the expected date of importation and, if available, particulars identifying the importer; and
- (h) sets out such other information and exhibits such other documents as may be prescribed by rules of court.

(4) No application may be made under subsection (1) with respect to an article in transit.

(5) No application may be made under subsection (1) with respect to the importation by a person of an article for his private and domestic use.

(6) Section 121 applies in respect of an affidavit made in accordance with subsection (3) by the exclusive licensee of the copyright that subsists in a work under this Part in the same manner as it would apply if the affidavit were made by the owner of the copyright.

137. Issuance of detention order

(1) Where, on the hearing of an application made under section 136, the right holder presents adequate evidence to satisfy the High Court that the article in question is prima facie an infringing copy, the High Court may make an order directing the Commissioner or an authorized officer to take reasonable measures to seize or detain the article on or after its importation.

(2) The High Court may require the right holder to provide security or an equivalent assurance in an amount sufficient to protect the importer and any other person having an interest in the article to be seized or detained, including the consignee and the owner of the article, from any loss or damage that may be incurred in the event that the seizure or detention is wrongful or the article is released to the importer under section 138(6).

- (a) 述明於提出申請時，有關的作品根據本部有版權存在；
- (b) 述明宣誓人是該版權的擁有人或是專用特許持有人；
- (c) (凡宣誓人宣稱是專用特許持有人) 述明宣誓人賴以證明他是專用特許持有人的事實，並附有宣誓人賴以證明他是專用特許持有人的文件作為證物；
- (d) 述明附於誓章作為證物的該作品的複製品是該作品的獲授權複製品；
- (e) 述明提出申請的理由，包括宣誓人賴以顯示有關物品表面看來是侵犯版權複製品的事實；
- (f) 列出有關物品的足夠詳細說明，使總監可輕易辨認該物品；
- (g) 列出預期採用的運輸工具的詳情及預期輸入的日期，以及識別輸入者的詳情(如有的話)；及
- (h) 列出法院規則所訂明的其他資料和附有法院規則訂明的其他文件作為證物。

(4) 任何人不得就過境物品而根據第(1)款提出申請。

(5) 如有任何人輸入任何物品供他私人和家居使用，則不得根據第(1)款就該輸入提出申請。

(6) 第121條適用於任何根據本部而有版權存在的作品的版權的專用特許持有人按照第(3)款作出的誓章，而適用的方式與假使該誓章是由該版權擁有人作出而該條即會適用的方式相同。

137. 扣留令的發出

(1) 凡有就根據第136條提出的申請而進行的聆訊，則如在進行該聆訊時權利持有人出示充分的證據，令高等法院信納有關物品表面看來是侵犯版權複製品，則高等法院可作出命令，指示總監或任何獲授權人員採取合理措施，於該物品輸入時或輸入後檢取或扣留該物品。

(2) 高等法院可規定權利持有人提供保證或任何相等的擔保，其款額須足以保障輸入者及對被檢取或扣留的物品享有權益的任何其他人(包括該物品的收貨人及擁有人)在該項檢取或扣留如屬錯誤或該物品如根據第138(6)條發還輸入者時，可免受可能會招致的任何損失或損害。

(3) A detention order may contain such terms and conditions as the High Court considers appropriate.

(4) The High Court shall not make a detention order with respect to any article that has been seized or detained by, and that is in the custody of, the Commissioner or an authorized officer pursuant to any law.

(5) Where the Commissioner or an authorized officer seizes or detains an article pursuant to any law, other than this Division or Division III of Part III, any detention order made with respect to that article ceases to have effect.

(6) Where the High Court makes a detention order, the right holder shall forthwith serve a copy of the order on the Commissioner.

(7) A detention order has effect from the date on which it is made or such later date as may be specified by the High Court and ceases to have effect 60 days from that date unless the Commissioner or an authorized officer has, pursuant to the order and within that period, seized or detained any article to which the order applies.

138. Enforcement of detention order

(1) Where a detention order is served on the Commissioner, the Commissioner or an authorized officer shall, subject to the terms and conditions of the order, seize or detain any article to which the order applies.

(2) The right holder shall—

(a) supply to the Commissioner or an authorized officer sufficient information on the article and the particular importation to render the article recognizable and the shipment or particular importation identifiable and any other information the Commissioner or an authorized officer may reasonably require for the purpose of carrying out the detention order;

(b) deposit with the Commissioner an amount that is, in the opinion of the Commissioner, sufficient to reimburse the Government for the costs likely to be incurred in connection with the carrying out of the detention order; and

(c) upon notification in writing by the Commissioner or an authorized officer of the seizure or detention of the article, provide such storage space and other facilities as he may require.

(3) The Commissioner or an authorized officer may refuse to carry out the detention order if the right holder fails to comply with subsection (2).

(4) The Commissioner may, after giving written notice to the right holder, apply to the High Court for directions in carrying out the detention order, and the High Court may, after giving the right holder an opportunity to be heard, give such directions as it thinks fit.

(3) 扣留令可載有高等法院認為適當的條款及條件。

(4) 如任何物品已由總監或任何獲授權人員依據任何法律檢取或扣留，並正由其保管，則高等法院不得就該物品作出扣留令。

(5) 凡總監或任何獲授權人員依據本分部或第 III 部第 III 分部以外的任何法律檢取或扣留任何物品，則就該物品而作出的任何扣留令即須停止具有效力。

(6) 凡高等法院作出扣留令，則權利持有人須立即將該命令的副本一份送達總監。

(7) 扣留令由作出的日期或由高等法院指明的較後的日期起具有效力，並須於自該日期起計的 60 天屆滿時停止具有效力，但如總監或任何獲授權人員已依據該命令於該期間內檢取或扣留該命令適用的任何物品，則屬例外。

138. 扣留令的強制執行

(1) 凡有某扣留令送達總監，則總監或任何獲授權人員須在該命令的條款及條件的規限下，檢取或扣留該命令適用的任何物品。

(2) 權利持有人須——

(a) 向總監或任何獲授權人員提供關於該物品及有關輸入的充分資料，使該物品可以辨認和使付運的貨物或有關輸入可以識別，並提供總監或任何獲授權人員為執行該扣留令而可合理要求的任何其他資料；

(b) 將一筆總監認為足以償付政府就執行該扣留令而相當可能招致的費用的款額存放於總監處；及

(c) 在獲得總監或任何獲授權人員就將該物品被檢取或扣留一事所給予的書面通知後，提供他要求的貯存空間及其他設施。

(3) 如權利持有人沒有遵從第 (2) 款，則總監或任何獲授權人員可拒絕執行扣留令。

(4) 總監可在給予權利持有人書面通知後，向高等法院申請執行該扣留令的指示，而高等法院在給予該權利持有人陳述的機會後，可發出其認為合適的指示。

(5) The Commissioner or an authorized officer shall forthwith after an article is seized or detained pursuant to a detention order, give written notice of the seizure or detention to—

- (a) the right holder;
- (b) the importer; and
- (c) any other person to whom notice is required to be given by the terms of the order.

(6) Subject to subsection (7) and to any law authorizing the Commissioner or an authorized officer to seize or detain articles, the Commissioner or an authorized officer shall release any article that has been seized or detained pursuant to a detention order to the importer if the right holder has not, within a period of 10 days after notice of the seizure or detention is given to the right holder, notified the Commissioner in writing that an action for infringement in respect of the article has been brought under this Part.

(7) The High Court may, on application by the right holder, after giving the Commissioner and each person to whom notice is required to be given under subsection (5) an opportunity to be heard, extend the period referred to in subsection (6) by a period not exceeding an additional 10 days if it is satisfied that the request for the extension is reasonable.

(8) In proceedings under subsection (7), the High Court may require the right holder to provide security or an equivalent assurance in addition to that provided in accordance with section 137(2).

(9) Where the right holder has, within the period referred to in subsection (6), as may be extended under subsection (7), notified the Commissioner in writing that an action for infringement in respect of the article has been brought under this Part, the Commissioner or an authorized officer shall retain custody of the article subject to the direction of the court in the infringement proceedings.

(10) No public holiday, gale warning day or black rainstorm warning day is reckoned in the computation of the period referred to in subsection (6), as may be extended under subsection (7).

(11) In this section—

“black rainstorm warning day” (黑色暴雨警告日) means any day throughout or for part of which a black rainstorm warning is in force, and “black rainstorm warning” (黑色暴雨警告) means a warning issued by the Director of the Royal Observatory of a heavy rainstorm in, or in the vicinity of, Hong Kong by the use of the heavy rainstorm signal commonly referred to as Black;

“gale warning day” (烈風警告日) means any day throughout or for part of which a gale warning is in force, and “gale warning” (烈風警告) has the meaning assigned to it by section 2 of the Judicial Proceedings (Adjournment During Gale Warnings) Ordinance (Cap. 62).

(5) 在任何物品依據扣留令被檢取或扣留後，總監或任何獲授權人員須立即將檢取或扣留一事以書面通知——

- (a) 有關權利持有人；
- (b) 有關輸入者；及
- (c) 該命令的條款規定須通知的任何其他人。

(6) 如權利持有人在獲給予有關檢取或扣留的通知後 10 天內，沒有以書面通知總監，謂關乎該物品的侵犯版權訴訟已根據本部提起，則除第 (7) 款及授權總監或任何獲授權人員檢取或扣留物品的任何法律另有規定外，總監或任何獲授權人員須將已依據扣留令被檢取或扣留的任何物品發還輸入者。

(7) 高等法院可應權利持有人提出的申請，在給予總監及根據第 (5) 款規定須予通知的每名人士陳述的機會後，如信納延長第 (6) 款所提述的期間的請求屬合理，將該期間延長，但延長的期間以不超逾 10 天為限。

(8) 在根據第 (7) 款進行的法律程序中，高等法院可要求權利持有人除提供按照第 137(2) 條提供的保證或任何相等的擔保外，尚須提供額外的保證或任何相等的擔保。

(9) 凡權利持有人在第 (6) 款所提述的期間內 (該期間或已根據第 (7) 款延長)，已經以書面通知總監，謂關乎該物品的侵犯版權訴訟已根據本部提起，則總監或任何獲授權人員須在侵犯版權法律程序中法院所作出的指示的規限下，繼續保管該物品。

(10) 在計算第 (6) 款所提述的期間 (該期間或已根據第 (7) 款延長) 時，任何公眾假期、烈風警告日或黑色暴雨警告日均不得計算在內。

(11) 在本條中——

“烈風警告日” (gale warning day) 指全日或其中部分時間有烈風警告的日子，而“烈風警告” (gale warning) 具有《司法程序 (烈風警告期間聆訊延期) 條例》(第 62 章) 第 2 條給予該詞的涵義；

“黑色暴雨警告日” (black rainstorm warning day) 指全日或其中部分時間有黑色暴雨警告的日子，而“黑色暴雨警告” (black rainstorm warning) 指由天文台台長藉使用通常稱為黑色暴雨警告訊號的暴雨警告訊號而發出的關於在香港或香港附近出現暴雨的警告。

139. Variation or setting aside of detention order

(1) The Commissioner or the right holder may at any time apply to the High Court to vary the detention order.

(2) The importer or any other person affected by the detention order may at any time apply to the High Court to vary or set aside the order.

(3) A person who makes an application under subsection (1) or (2) shall give to the other parties such notice of the day fixed for the hearing of the application as a judge of the High Court may order.

(4) On the hearing of an application under subsection (1) or (2) to vary the detention order, the High Court may vary the order in such manner as it thinks just.

(5) On the hearing of an application under subsection (2) to set aside the detention order, the High Court may set aside the order on such terms and conditions as it thinks just.

(6) For the purposes of subsection (3)—

- (a) the parties to an application under subsection (1) are the Commissioner, the right holder and, if the article in question has been seized or detained pursuant to the detention order, the importer and any other person to whom notice is required to be given under section 138(5); and
- (b) the parties to an application under subsection (2) are the Commissioner, the right holder, the applicant and the importer, if the importer is not the applicant.

140. Disclosure of information

(1) Where an article is seized or detained pursuant to a detention order, the Commissioner may disclose to the right holder—

- (a) the names and addresses of the importer, the consignor and the consignee;
- (b) the nature and quantity of articles seized or detained pursuant to the order;
- (c) any statement made to the Commissioner or an authorized officer by any person in connection with the seizure or detention, either with the prior consent in writing of that person or without such consent where the person is dead or cannot after reasonable enquiries by the Commissioner as to his whereabouts be found by the Commissioner; and
- (d) any other information or document relating to any article seized or detained pursuant to the order which the Commissioner thinks fit to disclose.

139. 扣留令的更改或推翻

(1) 總監或權利持有人可隨時向高等法院申請更改扣留令。

(2) 受扣留令影響的輸入者或任何其他人士可隨時向高等法院申請更改或推翻該命令。

(3) 根據第(1)或(2)款提出申請的人須將定出的聆訊該申請的日期，按高等法院大法官的命令通知其他各方。

(4) 高等法院在聆訊根據第(1)或(2)款提出更改扣留令的申請時，可以其認為公正的方式更改該命令。

(5) 高等法院在聆訊根據第(2)款提出推翻扣留令的申請時，可在其認為公正的條款及條件下推翻該命令。

(6) 就第(3)款而言——

- (a) 根據第(1)款提出的申請的各方，指總監、權利持有人及(如有關物品已依據扣留令被檢取或扣留)輸入者，以及根據第138(5)條規定須予通知的任何其他人；及
- (b) 根據第(2)款提出的申請的各方，指總監、權利持有人、申請人及輸入者(如輸入者並非申請人)。

140. 資料的披露

(1) 凡有任何物品依據扣留令被檢取或扣留，則總監可向權利持有人披露——

- (a) 輸入者、付貨人及收貨人的姓名或名稱及地址；
- (b) 依據該命令檢取或扣留的物品的性質及數量；
- (c) 任何人就該項檢取或扣留而向總監或任何獲授權人員所作的任何陳述，但須事先得到該人的書面同意，如該人已死亡或總監在合理地查究該人的所在後仍未能找到該人，則不須事先得到該人的書面同意；及
- (d) 關乎依據該命令而被檢取或扣留的物品，並且是總監認為適宜披露的任何其他資料或文件。

- (2) Where the right holder seeks disclosure of—
- (a) any information or document that is not referred to in subsection (1); or
 - (b) any information or document that is referred to in subsection (1) but which the Commissioner has not disclosed,

he may apply to the High Court for an order requiring the Commissioner to disclose such information or document and the High Court may on such an application make such order for disclosure as it deems fit.

(3) An application under subsection (2) may be begun by motion with previous notice to the Commissioner.

141. Inspection of articles, release of samples, etc.

(1) Where an article is seized or detained pursuant to a detention order, the Commissioner or an authorized officer shall—

- (a) give the right holder sufficient opportunity to inspect the article for the purpose of substantiating his claim; and
- (b) give the importer an equivalent opportunity to inspect the article for the purpose of refuting the right holder's claim.

(2) Where more than one article is seized or detained pursuant to a detention order, the Commissioner or an authorized officer may permit the right holder or the importer to remove samples of the seized or detained articles if the right holder or the importer, as the case may be, gives the Commissioner or authorized officer the requisite undertakings.

(3) For the purposes of subsection (2), the requisite undertakings are undertakings in writing that the person giving the undertaking will—

- (a) return the samples to the Commissioner or authorized officer at a specified time that is satisfactory to the Commissioner or authorized officer; and
- (b) take reasonable care to prevent unnecessary damage to the samples.

(4) If the Commissioner or an authorized officer permits the inspection of any seized or detained article, or the removal of a sample, by the right holder in accordance with this section, the Government is not liable to the importer for any loss or damage suffered by the importer arising out of—

- (a) damage to any article incurred during the inspection; or
- (b) anything done by the right holder or any other person to, or in relation to, a sample removed by the right holder or any use made by the right holder of such sample.

(2) 凡權利持有人尋求披露——

- (a) 並沒有在第(1)款中提述的任何資料或文件；或
- (b) 在第(1)款中提述而總監並沒有披露的資料或文件，

該權利持有人即可向高等法院申請一項命令，規定總監披露該等資料或文件，而高等法院則可應該申請而作出其認為合適的命令以規定作出披露。

(3) 根據第(2)款提出的申請，可在事先給予總監通知的情況下藉動議而開始進行。

141. 檢查物品、發還樣本等

(1) 凡有任何物品依據扣留令被檢取或扣留，總監或任何獲授權人員須——

- (a) 給予權利持有人充分機會，為確立其申索而檢查該物品；及
- (b) 給予輸入者同等機會，為反駁權利持有人的申索而檢查該物品。

(2) 凡有多於一件物品依據扣留令被檢取或扣留，而權利持有人或輸入者(視屬何情況而定)給予總監或任何獲授權人員所需的承諾，則總監或該獲授權人員可允許該權利持有人或輸入者移走被檢取或扣留的物品的樣本。

(3) 就第(2)款而言，所需的承諾指給予該承諾的人會作出以下事情的書面承諾——

- (a) 在總監或獲授權人員認為滿意的指明時間，將樣本交還總監或獲授權人員；及
- (b) 以合理謹慎防止對樣本造成不必要的損害。

(4) 如總監或任何獲授權人員允許權利持有人按照本條檢查任何已被檢取或扣留的物品，或移走任何樣本，則就由於以下所述而使輸入者蒙受的任何損失或損害而言，政府無須對該輸入者負上任何法律責任——

- (a) 檢查時所招致對任何物品造成的損害；或
- (b) 權利持有人或任何其他人士對權利持有人移走的任何樣本作出的任何事情或就該樣本作出的任何事情，或權利持有人對該樣本作出的任何使用。

142. Costs payable

(1) The Commissioner may assess the costs incurred by the Government in connection with the carrying out of a detention order and may deduct those costs from the amount paid as a deposit by the right holder under section 138(2).

(2) Any costs assessed under subsection (1) shall be payable by the right holder to the Government and recoverable as a civil debt.

143. Compensation payable to importer, etc.

(1) Where an article is seized or detained pursuant to a detention order and the article is released pursuant to section 138(6), the importer, the consignee or the owner of the article may, within 6 months after the date on which the order is made, apply to the High Court for compensation for any loss or damage suffered by him by reason of the seizure or detention.

(2) Where—

- (a) an article is seized or detained pursuant to a detention order;
- (b) an action for infringement is brought under this Part in respect of the article within the period referred to in section 138(6), as may be extended under section 138(7); and
- (c) the action is discontinued, the claim of infringement is withdrawn or the court in the infringement proceedings determines that the infringement is not proved,

the importer, the consignee or the owner of the article may, within 6 months after the date on which the action is discontinued, the claim is withdrawn or the court renders its determination, as the case may be, apply to the High Court for compensation for any loss or damage suffered by him by reason of the seizure or detention.

(3) On an application under subsection (1) or (2), the High Court may make such order for compensation as it deems fit.

144. Rules

The power to make rules of court under section 54 of the Supreme Court Ordinance (Cap. 4) includes power to make rules of court regulating and prescribing the procedure and the practice to be followed in the High Court under this Division, and any matter incidental to or relating to that procedure or practice, including rules prescribing any matter or thing that under this Division is to be or may be prescribed by rules of court.

142. 須繳付的費用

(1) 總監可評定政府就執行扣留令而招致的費用，並可從權利持有人根據第 138(2) 條繳付作為按金的款額中扣除該等費用。

(2) 根據第 (1) 款評定的任何費用，須由權利持有人向政府繳付，並可作為民事債項追討。

143. 須付予輸入者等的補償

(1) 凡有任何物品依據任何扣留令被檢取或扣留，而該物品又依據第 138(6) 條予以發還，則該物品的輸入者、收貨人或擁有人可於該命令作出的日期後 6 個月內，向高等法院申請因該項檢取或扣留而使他蒙受的任何損失或損害的補償。

(2) 凡——

- (a) 有任何物品依據扣留令被檢取或扣留；
- (b) 任何侵犯版權訴訟在第 138(6) 條所提述的期間內 (該期間或已根據第 138(7) 條延長) 根據本部就該物品而提起；及
- (c) 該宗訴訟中止、侵犯版權的申索被撤回，或法院在侵犯版權法律程序中裁定該項侵犯版權並沒有獲得證明，

則該物品的輸入者、收貨人或擁有人可在該宗訴訟中止、該項申索被撤回或法院作出裁定 (視屬何情況而定) 的日期後 6 個月內，向高等法院申請因該項檢取或扣留而使他蒙受的任何損失或損害的補償。

(3) 高等法院可應根據第 (1) 或 (2) 款提出的申請，作出其認為合適的補償令。

144. 規則

根據《最高法院條例》(第 4 章) 第 54 條訂立法院規則的權力，包括就規管和訂明根據本分部在高等法院須遵守的程序及常規以及該等程序或常規的任何附帶或有關事宜訂立法院規則 (包括訂立訂明任何根據本分部須由或可由法院規則訂明的事宜或事情的規則) 的權力。

DIVISION VIII

第 VIII 分部

COPYRIGHT LICENSING

版權特許

145. Licensing schemes and licensing bodies

(1) In this Part a “licensing scheme” (特許計劃) means a scheme setting out—

- (a) the classes of case in which the operator of the scheme, or the person on whose behalf he acts, is willing to grant copyright licences; and
- (b) the terms on which licences would be granted in those classes of case,

and for this purpose a “scheme” (計劃) includes anything in the nature of a scheme, whether described as a scheme or as a tariff or by any other name.

(2) In this section “copyright licences” (版權特許) means licences to do, or authorize the doing of, any of the acts restricted by copyright.

(3) References in this Division to licences or licensing schemes covering works of more than one author do not include licences or schemes covering only—

- (a) a single collective work or collective works of which the authors are the same; or
- (b) works made or distributed by, or by employees of or commissioned by, a single individual, firm, company or group of companies,

and for this purpose a “group of companies” (公司集團) has the meaning assigned to it by section 2 of the Companies Ordinance (Cap. 32).

(4) In this Division—

“licensing body” (特許機構) means a society or other organization, whether registered under section 149 or not, which has as its main object, or one of its main objects, the negotiation or granting, either as owner or prospective owner of copyright or as agent for him, of copyright licences, and whose objects include the granting of licences covering works of more than one author;

“register” (註冊紀錄冊) means the register of copyright licensing bodies established under section 147;

“Registrar” (處長) means the Registrar of Copyright Licensing Bodies specified in section 146;

“registration” (註冊) means the entry of the name of a licensing body in the register in accordance with section 149 and “registered” (註冊) is construed accordingly.

[cf. 1988 c. 48 s. 116 U.K.]

145. 特許計劃及特許機構

(1) 在本部中，“特許計劃”(licensing scheme) 指任何列明以下項目的計劃——

- (a) 計劃的營辦人，或由該營辦人代為行事的人願意批出版權特許的個案種類；及
- (b) 在該等個案種類中會據以批出特許的條款，

而就此而言，“計劃”(scheme) 包括任何具有計劃性質的東西，不論該東西是否被描述為計劃或收費表，亦不論其有任何其他名稱。

(2) 在本條中，“版權特許”(copyright licences) 指特許作出或授權作出受版權限制的作為中的任何作為的特許。

(3) 在本分部中，凡提述涵蓋多於一名作者的作品的特許或特許計劃，不包括僅涵蓋以下作品的特許或特許計劃——

- (a) 由相同作者製作的單一部或多於一部的匯集作品；或
- (b) 由單一個人、商號、公司或公司集團或其僱員製作或分發的作品，或由單一個人、商號、公司或公司集團委託製作的作品，

而就此而言，“公司集團”(group of companies) 具有《公司條例》(第 32 章) 第 2 條給予該詞的涵義。

(4) 在本分部中——

“特許機構”(licensing body) 指不論是否根據第 149 條註冊的社團或其他組織，其主要宗旨或其中一項主要宗旨是作為版權的擁有人或版權的準擁有人或作為其代理人而就版權特許進行洽談或批出版權特許，此外，其宗旨包括批出涵蓋多於一名作者的作品的特許；

“處長”(Registrar) 指第 146 條所指明的版權特許機構註冊處處長；

“註冊”(registration) 用作名詞時指按照第 149 條將特許機構的名稱記入註冊紀錄冊內；而“註冊”(registered) 用作動詞亦據此解釋；

“註冊紀錄冊”(register) 指根據第 147 條設立的版權特許機構註冊紀錄冊。

[比照 1988 c. 48 s. 116 U.K.]

Registration of licensing bodies

146. Registrar of Copyright Licensing Bodies

The Director of Intellectual Property is the Registrar of Copyright Licensing Bodies.

147. Maintenance of register and inspection

(1) The Registrar shall establish and maintain a register of copyright licensing bodies in such form and manner as he determines and containing such particulars as he thinks fit.

(2) The register is to be open for inspection in such place and in such manner and subject to the payment of such appropriate fee as may be specified by the Registrar by notice in the Gazette.

148. Application for registration and renewal

(1) A licensing body may apply for registration or renewal of registration in such form and manner as may be specified by the Registrar.

(2) An application must be accompanied by—

- (a) the appropriate prescribed fee; and
- (b) a statement in writing containing such particulars as may be specified by the Registrar either generally or in respect of the application.

(3) An application by a body corporate may be signed by any person authorized in that behalf by such body corporate and the Registrar may require such proof of that authorization as he considers necessary.

(4) An application by a partnership must be signed by each partner.

(5) A fee paid under this section is not refundable whether the application is approved or not.

149. Registration, issue of certificate of registration

(1) The Registrar may approve an application for registration and enter the name of the applicant in the register if the Registrar is satisfied—

- (a) that the applicant is a fit and proper person to be registered; and
- (b) with respect to the future, with the availability to the public of information relating to the scales of copyright royalty charges by the applicant for different uses, at least by the following means—

特許機構的註冊

146. 版權特許機構註冊處處長

知識產權署署長即為版權特許機構註冊處處長。

147. 註冊紀錄冊的備存及查閱

(1) 處長須按其決定的格式及方式設立和備存一份版權特許機構註冊紀錄冊，該註冊紀錄冊須載有處長認為合適的詳情。

(2) 註冊紀錄冊須以處長藉憲報公告指明的方式，在處長如此指明的地方供公開查閱，但在查閱前須先繳付處長如此指明的適當費用。

148. 申請註冊和續期

(1) 任何特許機構可按照處長藉憲報公告指明的格式及方式申請註冊或註冊續期。

(2) 申請必須附有——

- (a) 適當的訂明費用；及
- (b) 一份書面陳述，該陳述須載有處長一般地指明或就該項申請而指明的詳情。

(3) 由法人團體提出的申請，可由獲該法人團體為此而授權的任何人簽署，而處長可規定須就該項授權提交其認為必需的證明。

(4) 由合夥提出的申請必須由每一名合夥人簽署。

(5) 不論申請是否獲批准，根據本條所繳付的任何費用概不退還。

149. 註冊、註冊證明書的發出

(1) 凡有某項註冊申請提出，如處長信納——

- (a) 申請人是合適和適當的獲註冊人選；及
- (b) 就將來而言，申請人至少藉下列方法使公眾可以得到關於為不同用途而收取的版權使用費的收費率的資料——

- (i) by setting the scales out in its brochures and licence application forms;
- (ii) by exhibiting the scales in the registered office and places of business of the applicant conspicuously to the public; and
- (iii) by publishing the scales in an English language newspaper and a Chinese language newspaper in Hong Kong on a day within the 2 weeks after the issue of the certificate of registration.

(2) Upon entry of the name of the applicant in the register, the Registrar shall issue to the applicant a certificate of registration in such form as the Registrar determines specifying the requirements with respect to—

- (a) the publication of scales of copyright royalty charges; and
- (b) the charging of copyright royalty charges not exceeding the scales published,

which the licensing body must comply with.

150. Change of royalty charges during currency of certificate

(1) A registered licensing body which proposes to charge copyright royalty charges otherwise than in accordance with the scales last published on registration or on renewal of registration shall notify the Registrar in writing together with sufficient particulars of the proposed new scales of charges at least one month before the new scales come into effect.

(2) The licensing body shall make available to the public the information relating to the new scales of copyright royalty charges for different uses at least by the means specified in section 149(1)(b) at least 14 days before the new scales come into effect.

(3) The registration of a licensing body which fails to comply with subsection (1) or (2) or both subsections is deemed to be cancelled from the date when the new scales come into effect.

151. Duration of registration, renewal and cancellation

(1) A certificate of registration is valid for a period of 12 months, or such lesser period as may be specified in the certificate, from the date on which it is granted.

(2) A registered licensing body may apply for the renewal of its registration for a period not exceeding 12 months.

(3) An application for the renewal of registration must be made at least one month before the expiry of the current registration.

- (i) 在其小冊子及特許申請表內列明該等收費率；
- (ii) 在其註冊辦事處及營業地點以顯眼的方式向公眾展示該等收費率；及
- (iii) 在發出註冊證明書後 2 星期內的任何一天於香港的一份中文報章及一份英文報章刊登該等收費率，

則處長可批准該項註冊申請，並可將該申請人的姓名或名稱記入註冊紀錄冊內。

(2) 在註冊紀錄冊內記入該申請人的記項後，處長即須向該申請人發出一份由處長決定格式的註冊證明書，該證明書須就以下項目指明特許機構必須遵從的規定——

- (a) 刊登版權使用費的收費率；及
- (b) 按不超逾所刊登的版權使用費的收費率而收取版權使用費。

150. 在證明書的有效期限內更改使用費

(1) 註冊特許機構如建議不按照在註冊或註冊續期的情況下而最近刊登的收費率收取版權使用費，須在所建議的新收費率的生效日期前的最少一個月前以書面通知處長，而該通知須連同該新收費率的充分詳情。

(2) 該特許機構須在為不同用途而收取的版權使用費的新收費率的生效日期前的最少 14 天前，最起碼以第 149(1)(b) 條所指明的方法向公眾提供與該新收費率有關的資料。

(3) 凡特許機構沒有遵守第 (1) 或 (2) 款或沒有遵守該兩款，其註冊即當作在新收費率的生效日期起被撤銷。

151. 註冊的期限、續期及撤銷

(1) 註冊證明書在自其獲批予的日期起計的 12 個月期間內或在該證明書中指明的較短期間內有效。

(2) 註冊特許機構可申請將其註冊續期一段不超逾 12 個月的期間。

(3) 註冊續期的申請，須在現有註冊期滿失效前的最少一個月前提出。

(4) The Registrar may decline an application for renewal of registration by a licensing body or cancel the registration of a licensing body if—

- (a) the licensing body is no longer a fit and proper person to be registered; or
- (b) any of the requirements of the Registrar specified under subsection (5) or section 149(2) in relation to the licensing body is not complied with.

(5) On a renewal of registration, the Registrar shall issue to the licensing body a new certificate in such form as the Registrar determines specifying the requirements with respect to—

- (a) the publication of scales of copyright royalty charges; and
- (b) the charging of copyright royalty charges not exceeding the scales published.

(6) The Registrar shall remove the name of the licensing body from the register if its application for renewal of registration is declined or its registration is cancelled.

152. Regulations

The Secretary for Trade and Industry may by regulation—

- (a) prescribe the fees for the application for registration and for renewal of registration; and
- (b) provide for the better carrying into effect of this system of registration.

153. No liability in the case of the bona fide exercise of functions under this Division

(1) No liability is incurred by the Registrar in respect of anything done or omitted to be done by him bona fide in the exercise or purported exercise of any functions conferred or imposed by or under this Division.

(2) In this section “functions” (職能) includes powers and duties.

References and applications with respect to licensing schemes

154. Licensing schemes to which sections 155 to 160 apply

Sections 155 to 160 (references and applications with respect to licensing schemes) apply to licensing schemes operated by licensing bodies which cover works of more than one author, so far as they relate to licences for—

(4) 如有以下情況，處長可拒絕任何特許機構的註冊續期申請，或將該特許機構的註冊撤銷——

- (a) 該特許機構不再是合適和恰當的獲註冊人選；或
- (b) 處長根據第(5)款或第149(2)條就該特許機構而指明的任何規定不獲遵守。

(5) 在註冊獲得續期時，處長須向特許機構發出一份符合處長所決定的格式的新證明書，該證明書須指明關於以下事項的規定——

- (a) 版權使用費的收費率的發表；及
- (b) 收取不超過所發表的收費率的版權使用費。

(6) 如特許機構的註冊續期申請被拒絕或其註冊被撤銷，則處長須將該特許機構的名稱從註冊紀錄冊中除去。

152. 規例

工商司可藉規例——

- (a) 訂明申請註冊及申請註冊續期的費用；及
- (b) 為使註冊制度更有效地施行而訂定條文。

153. 如真誠地行使本分部所指職能則無須負上法律責任

(1) 處長如在行使或本意是行使由本分部賦予或施加或根據本分部而賦予或施加的任何職能時，真誠地作出或沒有作出任何事情，則處長不會就此而招致法律責任。

(2) 在本條中，“職能”(functions)包括權力及職責。

關於特許計劃的轉介及申請

154. 第155至160條適用的特許計劃

第155至160條(關於特許計劃的轉介及申請)適用於由特許機構營辦並涵蓋多於一名作者的作品的特許計劃，但只限於在該等計劃是關乎以下項目的特許的範圍內如此適用——

- (a) copying the work;
- (b) where the work is a computer program or sound recording, the rental of copies of the work to the public;
- (c) performing, playing or showing the work in public;
- (d) broadcasting the work or including it in a cable programme service;
- (e) issuing or making available copies of the work to the public;
- (f) making adaptations of the work; or
- (g) any other act restricted by the copyright in the work,

and references in those sections to a licensing scheme are to be construed accordingly.

[*cf.* 1988 c. 48 s. 117 U.K.]

155. Reference of proposed licensing scheme to Tribunal

(1) An organization claiming to be representative of persons claiming that they require licences in cases of a description to which the scheme would apply, either generally or in relation to any description of case, may refer the terms of a licensing scheme proposed to be operated by a licensing body to the Copyright Tribunal.

(2) The Tribunal shall first decide whether to entertain the reference, and may decline to do so on the ground that the reference is premature.

(3) If the Tribunal decides to entertain the reference it shall consider the matter referred and make such order, either confirming or varying the proposed scheme, either generally or so far as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable in the circumstances.

(4) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

[*cf.* 1988 c. 48 s. 118 U.K.]

156. Reference of licensing scheme to Tribunal

(1) If while a licensing scheme is in operation a dispute arises between the operator of the scheme and—

- (a) a person claiming that he requires a licence in a case of a description to which the scheme applies; or
- (b) an organization claiming to be representative of such persons,

- (a) 複製該作品；
 - (b) (如該作品是電腦程式或聲音紀錄) 租賃該作品的複製品予公眾；
 - (c) 公開表演、播放或放映該作品；
 - (d) 廣播該作品或將該作品包括在有線傳播節目服務內；
 - (e) 向公眾發放或提供該作品的複製品；
 - (f) 製作該作品的改編本；或
 - (g) 任何其他受該作品的版權所限制的作為，
- 而凡在上述各條中提述的特許計劃，即據此解釋。

[*比照* 1988 c. 48 s. 117 U.K.]

155. 將建議的特許計劃轉介審裁處

(1) 凡某些人聲稱他們在特許計劃會適用的某類別的個案中需要取得特許(不論是一般性地或是就任何類別個案)，並有組織聲稱是該等人的代表，則該組織可將建議由任何特許機構營辦的特許計劃的條款轉介版權審裁處。

(2) 審裁處須首先決定是否受理該項轉介，並可以該項轉介為時過早為理由而拒絕受理。

(3) 審裁處如決定受理該項轉介，須考慮所轉介的事宜，並作出審裁處裁定在當時情況下屬合理的命令，以確認或更改建議的計劃，而該確認或更改，可以是一般性的，亦可以是就該計劃與該項轉介所關乎的類別的個案有關的範圍而作出的。

(4) 所作出的命令可規定該命令無限期有效，亦可規定該命令在審裁處裁定的期間有效。

[*比照* 1988 c. 48 s. 118 U.K.]

156. 將特許計劃轉介審裁處

(1) 如在特許計劃營辦期間，在該計劃的營辦人與以下人士或組織之間發生爭議，而——

- (a) 有人聲稱他需要在該計劃所適用的類別的個案中取得特許；或
- (b) 有組織聲稱是該等人的代表，

that person or organization may refer the scheme to the Copyright Tribunal in so far as it relates to cases of that description.

(2) A scheme which has been referred to the Tribunal under this section remains in operation until proceedings on the reference are concluded.

(3) The Tribunal shall consider the matter in dispute and make such order, either confirming or varying the scheme so far as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable in the circumstances.

(4) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

[*cf.* 1988 c. 48 s. 119 U.K.]

157. Further reference of scheme to Tribunal

(1) Where the Copyright Tribunal has on a previous reference of a licensing scheme under section 155 or 156, or under this section, made an order with respect to the scheme, then, while the order remains in force—

- (a) the operator of the scheme;
- (b) a person claiming that he requires a licence in a case of the description to which the order applies; or
- (c) an organization claiming to be representative of such persons,

may refer the scheme again to the Tribunal so far as it relates to cases of that description.

(2) A licensing scheme may not, except with the special leave of the Tribunal, be referred again to the Tribunal in respect of the same description of cases—

- (a) within 12 months from the date of the order on the previous reference; or
- (b) if the order was made so as to be in force for 15 months or less, until the last 3 months before the expiry of the order.

(3) A scheme which has been referred to the Tribunal under this section and which is in operation remains in operation until proceedings on the reference are concluded.

(4) The Tribunal shall consider the matter in dispute and make such order, either confirming, varying or further varying the scheme so far as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable in the circumstances.

(5) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

[*cf.* 1988 c. 48 s. 120 U.K.]

則在該計劃所關乎的該類別的個案的範圍內，該人或該組織可將該計劃轉介版權審裁處。

(2) 已根據本條轉介審裁處的計劃仍可繼續營辦，直至就該項轉介進行的法律程序審結為止。

(3) 審裁處須考慮爭議中的事項，並作出審裁處裁定在當時情況下屬合理的命令，以在有關計劃與該項轉介所關乎的類別的個案有關的範圍內，確認或更改該計劃。

(4) 所作出的命令可規定該命令無限期有效，亦可規定該命令在審裁處裁定的期間有效。

[*比照* 1988 c. 48 s. 119 U.K.]

157. 將計劃再次轉介審裁處

(1) 凡先前根據第 155 或 156 條轉介特許計劃而版權審裁處已就該計劃作出命令，或先前根據本條轉介特許計劃而版權審裁處已就該計劃作出命令，則在該項命令仍然有效時——

- (a) 該計劃的營辦人；
- (b) 聲稱需要在該命令所適用的類別的個案中取得特許的人；或
- (c) 聲稱是該等人的代表的組織，

在該計劃所關乎的該類別的個案的範圍內，可將該計劃再度轉介審裁處。

(2) 除獲審裁處特別許可外——

- (a) 在自就先前的轉介作出的命令的日期起計的 12 個月內，不得就相同類別的個案將特許計劃再度轉介審裁處；或
- (b) 如作出的命令規定該項命令有效 15 個月或少於 15 個月，則在該項命令屆滿日期之前的最後 3 個月，方可就相同類別的個案將特許計劃再度轉介審裁處。

(3) 如任何計劃已根據本條轉介審裁處並仍在營辦，則該計劃可繼續營辦，直至就該項轉介進行的法律程序審結為止。

(4) 審裁處須考慮爭議中的事項，並作出審裁處裁定在當時情況下屬合理的命令，在有關計劃與該項轉介所關乎的類別的個案有關的範圍內，確認或更改或進一步更改該計劃。

(5) 所作出的命令可規定該命令無限期有效，亦可規定該命令在審裁處裁定的期間有效。

[*比照* 1988 c. 48 s. 120 U.K.]

158. Application for grant of licence in connection with licensing scheme

(1) A person who claims, in a case covered by a licensing scheme, that the operator of the scheme has refused to grant him or procure the grant to him of a licence in accordance with the scheme, or has failed to do so within a reasonable time after being asked, may apply to the Copyright Tribunal for an order under this section.

(2) A person who claims, in a case excluded from a licensing scheme, that the operator of the scheme either—

(a) has refused to grant him a licence or procure the grant to him of a licence, or has failed to do so within a reasonable time of being asked, and that in the circumstances it is unreasonable that a licence should not be granted; or

(b) proposes terms for a licence which are unreasonable, may apply to the Tribunal for an order under this section.

(3) A case is regarded as excluded from a licensing scheme for the purposes of subsection (2) if—

(a) the scheme provides for the grant of licences subject to terms excepting matters from the licence and the case falls within such an exception; or

(b) the case is so similar to those in which licences are granted under the scheme that it is unreasonable that it should not be dealt with in the same way.

(4) If the Tribunal is satisfied that the claim is well-founded, it shall make an order declaring that, in respect of the matters specified in the order, the applicant is entitled to a licence on such terms as the Tribunal may determine to be applicable in accordance with the scheme or, as the case may be, to be reasonable in the circumstances.

(5) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

[*cf.* 1988 c. 48 s. 121 U.K.]

159. Application for review of order as to entitlement to licence

(1) Where the Copyright Tribunal has made an order under section 158 that a person is entitled to a licence under a licensing scheme, the operator of the scheme or the original applicant may apply to the Tribunal to review its order.

158. 申請批出與特許計劃有關的特許

(1) 凡在特許計劃所涵蓋的個案中，有人聲稱該計劃的營辦人拒絕按照該計劃向他批出特許或拒絕促使按照該計劃向他批出特許，或在向該營辦人提出要求之後的一段合理的時間內，該營辦人沒有如此做，則該人可向版權審裁處申請作出本條所指的命令。

(2) 凡在特許計劃不包括的個案中，有人聲稱該計劃的營辦人——

(a) 已拒絕向他批出特許或拒絕促使向他批出特許，或在向該營辦人提出要求之後的一段合理時間內，該營辦人沒有如此做，而在當時情況下不批出特許是不合理的；或

(b) 就特許建議不合理的條款，

則該人可向審裁處申請作出本條所指的命令。

(3) 就第(2)款而言，任何個案如有以下情況，則該個案須視為不包括在特許計劃之內——

(a) 該計劃規定特許的批出須符合某些條款，而該等條款將某些事項排除在該特許之外，而該個案屬於該被排除在該特許之外的例外情況；或

(b) 該個案與根據該計劃而獲批出特許的個案相似至如該個案不獲以相同方式處理便屬不合理的程度。

(4) 審裁處如信納該項聲稱是具備充分理由的，則審裁處須作出命令，宣布就該項命令指明的事項而言，申請人有權在審裁處裁定為按照該計劃而屬適用的條款下，或在當時情況下屬合理的條款下(視屬何情況而定)取得特許。

(5) 所作出的命令可規定該命令無限期有效，亦可規定該命令在審裁處裁定的期間有效。

[*比照* 1988 c. 48 s. 121 U.K.]

159. 就與有權獲得特許有關的命令而申請覆核

(1) 凡版權審裁處已根據第 158 條作出命令，指某人根據特許計劃而有權獲得特許，則該計劃的營辦人或原申請人可向審裁處申請覆核其命令。

(2) An application may not be made, except with the special leave of the Tribunal—

- (a) within 12 months from the date of the order, or of the decision on a previous application under this section; or
- (b) if the order was made so as to be in force for 15 months or less, or as a result of the decision on a previous application under this section is due to expire within 15 months of that decision, until the last 3 months before the expiry date.

(3) The Tribunal shall on an application for review confirm or vary its order as the Tribunal may determine to be reasonable having regard to the terms applicable in accordance with the licensing scheme or, as the case may be, the circumstances of the case.

[*cf. 1988 c. 48 s. 122 U.K.*]

160. Effect of order of Tribunal as to licensing scheme

(1) A licensing scheme which has been confirmed or varied by the Copyright Tribunal—

- (a) under section 155 (reference of terms of proposed scheme); or
- (b) under section 156 or 157 (reference of existing scheme to Tribunal),

is in force or, as the case may be, remains in operation, so far as it relates to the description of case in respect of which the order was made, so long as the order remains in force.

(2) While the order is in force a person who in a case of a class to which the order applies—

- (a) pays to the operator of the scheme any charges payable under the scheme in respect of a licence covering the case in question or, if the amount cannot be ascertained, gives an undertaking to the operator to pay them when ascertained; and
- (b) complies with the other terms applicable to such a licence under the scheme,

is in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence granted by the owner of the copyright in question in accordance with the scheme.

(3) The Tribunal may direct that the order, so far as it varies the amount of charges payable, has effect from a date before that on which it is made, but not earlier than the date on which the reference was made or, if later, on which the scheme came into operation.

(2) 除獲審裁處特別許可外——

- (a) 在自作出命令的日期起計的 12 個月內，或在自審裁處根據本條而就一項先前的申請作出裁決的日期起計的 12 個月內，不得提出申請；或
- (b) 如作出的命令規定該項命令有效 15 個月或少於 15 個月，或因根據本條而就一項先前的申請作出的裁決而使該命令在自作出該項裁決時起計的 15 個月內屆滿，則在該項命令屆滿日期之前的最後 3 個月，方可提出申請。

(3) 審裁處須應覆核申請並在顧及按照有關的特許計劃而適用的條款或有關的個案的情況(視屬何情況而定)後，在審裁處裁定為合理的情況下，確認或更改其命令。

[*比照 1988 c. 48 s. 122 U.K.*]

160. 審裁處就特許計劃作出的命令的效力

(1) 凡版權審裁處已根據以下條文確認或更改某特許計劃，則只要該項命令繼續有效，在該計劃是關乎某類別的個案(而有關命令是就該個案作出的)的範圍內，該特許計劃即屬有效或即屬可繼續營辦(視屬何情況而定)——

- (a) 第 155 條(將建議的計劃的條款轉介)；或
- (b) 第 156 或 157 條(將現有的計劃轉介審裁處)。

(2) 在該項命令有效時，如任何人在該項命令所適用的種類的個案中——

- (a) 就涵蓋有關個案的特許而向該計劃的營辦人繳付根據該計劃而須繳付的任何收費，或如該等收費的款額不能確定，則向該營辦人作出承諾，在款額確定後當即繳付該等收費；及
- (b) 遵從適用於該計劃下的特許的其他條款，

則就侵犯版權而言，該人所處的地位，猶如該人在所有關鍵時間屬有關版權的擁有人按照該計劃而批出的特許的持有人一樣。

(3) 凡有命令更改須繳付的收費的款額，審裁處可指示該項命令自其作出的日期之前的日期起生效，但該生效日期不得早於作出轉介的日期，或(如較遲的話)該計劃實施的日期。

If such a direction is made—

- (a) any necessary repayments, or further payments, must be made in respect of charges already paid; and
- (b) the reference in subsection (2)(a) to the charges payable under the scheme is to be construed as a reference to the charges so payable by virtue of the order.

(4) Where the Tribunal has made an order under section 158 (order as to entitlement to licence under licensing scheme) and the order remains in force, the person in whose favour the order is made, if he—

- (a) pays to the operator of the scheme any charges payable in accordance with the order or, if the amount cannot be ascertained, gives an undertaking to pay the charges when ascertained; and
- (b) complies with the other terms specified in the order,

is in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence granted by the owner of the copyright in question on the terms specified in the order.

[*cf.* 1988 c. 48 s. 123 U.K.]

References and applications with respect to licensing by licensing bodies

161. Licences to which sections 162 to 166 apply

Sections 162 to 166 (references and applications with respect to licensing by licensing bodies) apply to licences which are granted by a licensing body otherwise than in pursuance of a licensing scheme and which cover works of more than one author, so far as they authorize—

- (a) copying the work;
- (b) where the work is a computer program or sound recording, the rental of copies of the work to the public;
- (c) performing, playing or showing the work in public;
- (d) broadcasting the work or including it in a cable programme service;
- (e) issuing or making available copies of the work to the public;
- (f) making adaptations of the work; or
- (g) any other act restricted by the copyright in the work,

and references in those sections to a licence are to be construed accordingly.

[*cf.* 1988 c. 48 s. 124 U.K.]

該項指示如作出的話，則——

- (a) 須就已繳付的收費而作出必需的償還，或進一步付款；及
- (b) 第 (2)(a) 款所提述的根據該計劃而須繳付的收費，須解釋為提述憑藉該命令而須繳付的收費。

(4) 凡審裁處已根據第 158 條作出命令 (關於有權根據特許計劃獲得特許的命令)，而該項命令仍繼續有效，該命令所惠及的人——

- (a) 如向該計劃的營辦人繳付按照該命令所須繳付的任何收費，或如款額不能確定，則作出承諾，在款額確定後當即繳付該等收費；及
- (b) 遵從該命令指明的其他條款，

則就侵犯版權而言，該人所處的地位，猶如該人在所有關鍵時間屬有關版權的擁有人按照該命令所指明的條款而批出的特許的持有人一樣。

[*比照* 1988 c. 48 s. 123 U.K.]

就特許機構批出的特許而作出的轉介及申請

161. 第 162 至 166 條適用的特許

第 162 至 166 條 (就特許機構批出的特許而作出的轉介及申請) 適用於由特許機構並非依據特許計劃而批出並涵蓋多於一名作者的作品的特許，但只限於該等特許授權作出以下事情的範圍內如此適用——

- (a) 複製該作品；
- (b) (如該作品是電腦程式或聲音紀錄) 租賃該作品的複製品予公眾；
- (c) 公開表演、播放或放映該作品；
- (d) 廣播該作品或將該作品包括在有線傳播節目服務內；
- (e) 向公眾發放或提供該作品的複製品；
- (f) 製作該作品的改編本；或
- (g) 任何其他受該作品的版權所限制的作為，

而凡在上述各條中提述的特許，即據此解釋。

[*比照* 1988 c. 48 s. 124 U.K.]

162. Reference to Tribunal of proposed licence

(1) A prospective licensee may refer the terms on which a licensing body proposes to grant a licence to the Copyright Tribunal.

(2) The Tribunal shall first decide whether to entertain the reference, and may decline to do so on the ground that the reference is premature.

(3) If the Tribunal decides to entertain the reference it shall consider the terms of the proposed licence and make such order, either confirming or varying the terms, as it may determine to be reasonable in the circumstances.

(4) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

[*cf. 1988 c. 48 s. 125 U.K.*]

163. Reference to Tribunal of expiring licence

(1) A licensee under a licence which is due to expire, by effluxion of time or as a result of notice given by the licensing body, may apply to the Copyright Tribunal on the ground that it is unreasonable in the circumstances that the licence should cease to be in force.

(2) Such an application may not be made until the last 3 months before the licence is due to expire.

(3) A licence in respect of which a reference has been made to the Tribunal remains in operation until proceedings on the reference are concluded.

(4) If the Tribunal finds the application well-founded, it shall make an order declaring that the licensee continues to be entitled to the benefit of the licence on such terms as the Tribunal may determine to be reasonable in the circumstances.

(5) An order of the Tribunal under this section may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

[*cf. 1988 c. 48 s. 126 U.K.*]

164. Tribunal may award interim payment and restrict application for interlocutory injunction

(1) Where an application has been made to the Copyright Tribunal under section 162 or 163, the Tribunal may of its own motion or on the application of the licensing body order the licensee to make such interim payment of such royalty as the Tribunal thinks just to the licensing body.

162. 將建議的特許轉介審裁處

(1) 準特許持有人可將特許機構建議批出的特許的條款轉介版權審裁處。

(2) 審裁處須首先決定是否受理該項轉介，並可以該項轉介為過早為理由而拒絕受理。

(3) 審裁處如決定受理該項轉介，須就建議的特許的條款作出考慮，並作出審裁處裁定在當時情況下屬合理的命令，以確認或更改該等條款。

(4) 所作出的命令可規定該命令無限期有效，亦可規定該命令在審裁處裁定的期間有效。

[*比照 1988 c. 48 s. 125 U.K.*]

163. 將即將失效的特許轉介審裁處

(1) 任何特許如因時間屆滿或由於特許機構給予通知而到期失效，則該特許的持有人可基於該特許在當時情況下停止有效是不合理為理由而向版權審裁處提出申請。

(2) 在特許到期失效之前的最後 3 個月，該項申請方可提出。

(3) 已轉介審裁處的特許仍可繼續有效，直至就該轉介而進行的法律程序審結為止。

(4) 審裁處如裁斷該項申請是具備充分理由的，須作出命令宣布有關的特許持有人繼續有權按照審裁處裁定在當時情況下屬合理的條款享有特許的利益。

(5) 審裁處根據本條作出的命令可規定該命令無限期有效，亦可規定該命令在審裁處裁定的期間有效。

[*比照 1988 c. 48 s. 126 U.K.*]

164. 版權審裁處可判給中期付款和限制非正審強制令的申請

(1) 凡已有申請根據第 162 或 163 條向版權審裁處提出，審裁處可自行或應特許機構的申請，命令特許持有人就該審裁處認為屬公正的使用費向該特許機構作出中期付款。

(2) Where a reference or an application has been made to the Tribunal under section 162 or 163, the Tribunal may of its own motion or on the application of the prospective licensee or licensee make an order that pending the final determination of the reference or application or until further order by the Tribunal, the licensing body shall not apply for any interlocutory injunction against the prospective licensee (in the case of a reference under section 162) or the licensee (in the case of an application under section 163).

(3) Where the Tribunal has made an order under subsection (2), any application for an interlocutory injunction in any court by the licensing body against the prospective licensee or licensee, as the case may be, shall not be entertained or, if it has been entertained, shall be stayed until the final determination of the reference or application or further order by the Tribunal.

(4) Subject to any earlier termination of the order, an order under subsection (2) ceases to have effect on the final determination of the reference or application, as the case may be.

165. Application for review of order as to licence

(1) Where the Copyright Tribunal has made an order under section 162 or 163, the licensing body or the person entitled to the benefit of the order may apply to the Tribunal to review its order.

(2) An application may not be made, except with the special leave of the Tribunal—

- (a) within 12 months from the date of the order or of the decision on a previous application under this section; or
- (b) if the order was made so as to be in force for 15 months or less, or as a result of the decision on a previous application under this section is due to expire within 15 months of that decision, until the last 3 months before the expiry date.

(3) The Tribunal shall on an application for review confirm or vary its order as the Tribunal may determine to be reasonable in the circumstances.

[*cf.* 1988 c. 48 s. 127 U.K.]

166. Effect of order of Tribunal as to licence

(1) Where the Copyright Tribunal has made an order under section 162 or 163 and the order remains in force, the person entitled to the benefit of the order shall if he—

- (a) pays to the licensing body any charges payable in accordance with the order or, if the amount cannot be ascertained, gives an undertaking to pay the charges when ascertained; and

(2) 凡已有轉介或申請根據第 162 或 163 條向審裁處作出或提出，審裁處可自行或應準特許持有人或特許持有人的申請作出命令，規定在聽候該項轉介或申請的最終裁定前，或在審裁處作出進一步的命令前，該特許機構不得針對準特許持有人（如情況屬根據第 162 條作出的轉介）或不得針對特許持有人（如情況屬根據第 163 條提出的申請）而申請任何非正審強制令。

(3) 凡審裁處已根據第 (2) 款作出命令，特許機構為針對準特許持有人或特許持有人（視屬何情況而定）而在任何法院申請非正審強制令，均不得受理，如已獲受理，則須擱置，直至該項轉介或申請獲最終裁定或審裁處作出進一步的命令為止。

(4) 除非根據第 (2) 款作出的命令於較早時終止，否則該命令在該項轉介或申請（視屬何情況而定）獲最終裁定時停止有效。

165. 申請覆核就特許而作出的命令

(1) 凡版權審裁處已根據第 162 或 163 條作出命令，特許機構或有權享有該命令的利益的人，可向審裁處申請覆核其命令。

(2) 除獲審裁處的特別許可外——

- (a) 在自作出命令的日期起計的 12 個月內，或在自審裁處根據本條而就一項先前的申請作出裁決的日期起計的 12 個月內，不得提出申請；或
- (b) 如作出的命令規定該項命令有效 15 個月或少於 15 個月，或因根據本條而就一項先前的申請作出的裁決而使該命令在自作出該項裁決起計的 15 個月內屆滿，則在該項命令屆滿日期之前的最後 3 個月，方可提出申請。

(3) 審裁處須按其裁定在當時情況下屬合理者而應覆核申請確認或更改其命令。

[*比照* 1988 c. 48 s. 127 U.K.]

166. 審裁處就特許作出的命令的效力

(1) 凡版權審裁處已根據第 162 或 163 條作出命令，而該項命令仍繼續有效，則有權享有該命令的利益的人——

- (a) 如向特許機構繳付按照該命令而須繳付的任何收費，或如款額不能確定，則作出承諾，在款額確定後當即繳付該等收費；及

(b) complies with the other terms specified in the order, be in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence granted by the owner of the copyright in question on the terms specified in the order.

(2) The benefit of the order may be assigned—

(a) in the case of an order under section 162, if assignment is not prohibited under the terms of the Tribunal's order; and

(b) in the case of an order under section 163, if assignment was not prohibited under the terms of the original licence.

(3) The Tribunal may direct that an order under section 162 or 163, or an order under section 165 varying such an order, so far as it varies the amount of charges payable, has effect from a date before that on which it is made, but not earlier than the date on which the reference or application was made or, if later, on which the licence was granted or, as the case may be, was due to expire.

(4) If such a direction is made—

(a) any necessary repayments, or further payments, must be made in respect of charges already paid; and

(b) the reference in subsection (1)(a) to the charges payable in accordance with the order is to be construed, where the order is varied by a later order, as a reference to the charges so payable by virtue of the later order.

[cf. 1988 c. 48 s. 128 U.K.]

Factors to be taken into account in certain classes of case

167. General considerations: unreasonable discrimination

(1) The Copyright Tribunal shall, in every case before it, have regard to public interest, and in determining what is reasonable on a reference or application under this Division relating to a licensing scheme or licence, the Tribunal shall have regard to—

(a) the availability of other schemes, or the granting of other licences, to other persons in similar circumstances;

(b) the terms of those schemes for licences;

(c) the nature of the work concerned;

(d) the relative bargaining power of the parties concerned; and

(e) the availability to the licensees or prospective licensees of relevant information relating to the terms of the licensing scheme or licence in question.

(b) 遵從該命令指明的其他條款，則就侵犯版權而言，該人所處的地位，猶如該人在所有關鍵時間屬有關版權的擁有人按照該命令所指明的條款批出的特許的持有人一樣。

(2) 該命令的利益，在以下情況下可以轉讓——

(a) 就根據第 162 條作出的命令而言，審裁處的命令的條款並不禁止轉讓；及

(b) 就根據第 163 條作出的命令而言，原有的特許的條款並不禁止轉讓。

(3) 審裁處可作出指示，規定根據第 162 或 163 條作出的命令，或在根據第 165 條作出的更改該命令下的須繳付收費的款額的範圍內的另一命令，自其作出的日期之前的日期起生效，但該生效日期不得早於作出轉介或提出申請的日期或(如較遲的話)批出該特許的日期或該特許到期失效的日期(視屬何情況而定)。

(4) 該項指示如作出的話，則——

(a) 須就已繳付的收費而作出任何必需的償還，或進一步付款；及

(b) 第(1)(a)款所提述的根據該命令而須繳付的收費，如該命令由一項較後的命令更改，則須解釋為提述憑藉該較後的命令而須繳付的收費。

[比照 1988 c. 48 s. 128 U.K.]

在某些種類的個案中須考慮的因素

167. 一般考慮：不合理的歧視

(1) 版權審裁處在審理其席前的每一宗個案時均須顧及公眾利益，而就任何特許計劃或特許根據本分部作出的轉介或提出的申請而言，在裁定甚麼是合理時，須顧及——

(a) 其他情況相類的人可獲提供的其他計劃，或向該等人批出的其他特許；

(b) 該等特許計劃的條款；

(c) 有關作品的性質；

(d) 有關各方的相對議價能力；及

(e) 特許持有人或準特許持有人可在何種程度上獲提供的關乎特許計劃或特許的條款的有關資料。

(2) The Copyright Tribunal shall exercise its powers so as to secure that there is no unreasonable discrimination between licensees, or prospective licensees, under the scheme or licence to which the reference or application relates and licensees under other schemes operated by, or other licences granted by, the same person or any other person.

(3) The mention in subsections (1) and (2) of specific matters to which the Tribunal is to have regard does not affect the general obligation of the Tribunal to have regard to all relevant considerations and in particular, to whether the exercise of its power will result in a conflict with a normal exploitation of the work or will unreasonably prejudice the legitimate interests of the copyright owner.

[*cf.* 1988 c. 48 ss. 129 & 135 U.K.]

Implied indemnity in schemes or licences

168. Implied indemnity in certain schemes and licences

(1) This section applies to—

- (a) schemes for licensing restricted acts in relation to copyright works; and
- (b) licences granted by licensing bodies,

where the scheme or licence does not specify the works to which it applies with such particularity as to enable licensees to determine whether a work falls within the scheme or licence by inspection of the scheme or licence and the work.

(2) There is implied—

- (a) in every scheme to which this section applies an undertaking by the operator of the scheme to indemnify a person granted a licence under the scheme; and
- (b) in every licence to which this section applies an undertaking by the licensing body to indemnify the licensee,

against any liability incurred by him by reason of his having infringed copyright by making or authorizing an act restricted by the copyright in a work in circumstances within the apparent scope of his licence.

(3) The circumstances of a case are within the apparent scope of a licence if—

- (a) it is not apparent from inspection of the licence and the work that it does not fall within the description of works to which the licence applies; and
- (b) the licence does not expressly provide that it does not extend to copyright to the description infringed.

(2) 版權審裁處須行使其權力以確保在該轉介或申請所關乎的計劃或特許下的特許持有人或準特許持有人，和由同一人或由任何其他人所營辦的其他計劃下或批出的其他特許下的特許持有人之間，並沒有存在任何不合理的歧視。

(3) 第(1)及(2)款提及審裁處須顧及的特定事宜，並不影響審裁處須顧及一切有關考慮因素的一般責任，尤其是審裁處行使其權力會否與作品的正常利用造成衝突或會不合理地損害版權擁有人的合法權益。

[*比照* 1988 c. 48 s. 129 & 135 U.K.]

計劃或特許中的隱含彌償

168. 某些計劃或特許中的隱含彌償

(1) 凡有——

- (a) 就版權作品而對受限制作為給予特許的計劃；及
- (b) 由特許機構批出的特許，

在對其所適用的作品作出的指明的詳盡程度，不足以使特許持有人藉查閱該計劃或特許和查閱某一作品而斷定該作品是否屬於該計劃或特許範圍內的作品，則本條適用於該計劃及特許。

(2) 在本條所適用的——

- (a) 每一項計劃中，均隱含由該計劃的營辦人對根據該計劃獲批出特許的人就有關法律責任而作出彌償的承諾；及
- (b) 每一項特許中，均隱含由特許機構對特許持有人就有關法律責任而作出彌償的承諾，

上述有關法律責任是指特許持有人在屬於其特許的表面範圍所包括的情況下，作出或授權作出受某一作品的版權所限制的作為，因而侵犯版權所招致的任何法律責任。

(3) 如在任何個案中——

- (a) 從查閱特許及作品所得，該作品表面上並非不屬於該特許所適用的作品類別的範圍內的作品；及
- (b) 該特許沒有明文規定其並不延伸適用於遭侵犯版權的作品類別，

則該個案的情況屬該特許的表面範圍所包括的情況。

(4) In this section “liability” (法律責任) includes liability to pay costs; and this section applies in relation to costs reasonably incurred by a licensee in connection with actual or contemplated proceedings against him for infringement of copyright as it applies to sums which he is liable to pay in respect of such infringement.

(5) A scheme or licence to which this section applies may contain reasonable provision—

- (a) with respect to the manner in which, and time within which, claims under the undertaking implied by this section are to be made;
- (b) enabling the operator of the scheme or, as the case may be, the licensing body to take over the conduct of any proceedings affecting the amount of his liability to indemnify.

(6) When an indemnity is implied under subsection (2), subject to subsection (7), the amount of damages which a court may award in favour of the owner of the copyright of a work who is not a member of the scheme or, as the case may be, the licensing body for infringement of the copyright must not exceed the amount that owner would receive if he was a member of the scheme or the licensing body.

(7) The court shall not award damages at an amount that will result in a conflict with a normal exploitation of the work or will unreasonably prejudice the legitimate interest of the copyright owner.

[*cf. 1988 c. 48 s. 136 U.K.*]

DIVISION IX

THE COPYRIGHT TRIBUNAL

The Tribunal

169. The Copyright Tribunal

- (1) There is established a tribunal called the Copyright Tribunal.
- (2) The Tribunal shall consist of the following members all of whom shall be appointed by the Governor—
 - (a) one Chairman and one Deputy Chairman each of whom must be qualified for appointment as a District Judge under section 5 of the District Court Ordinance (Cap. 336); and
 - (b) 7 ordinary members each of whom is to be appointed in his personal capacity.

(4) 在本條中，“法律責任”(liability)包括支付訟費的法律責任；凡有特許持有人因侵犯版權而有實際或打算針對他而進行的法律程序，則本條就該特許持有人因此而合理地招致的訟費而適用，一如本條適用於特許持有人就該項侵犯版權而有法律責任支付的款項一樣。

(5) 本條所適用的計劃或特許可載有合理條文——

- (a) 就本條的隱含承諾而提出申索的方式和時限作出規定；
- (b) 使該計劃的營辦人或特許機構(視屬何情況而定)能夠接手進行對其有法律責任作出彌償的款額有影響的任何法律程序。

(6) 凡有根據第(2)款而有的隱含彌償，則除第(7)款另有規定外，遭侵犯版權的作品的版權擁有人如並非上述計劃或特許機構(視屬何情況而定)的成員，法院可就該項侵犯版權而判給惠及版權擁有人的損害賠償，其款額不得超逾在假如該擁有人是該計劃或特許機構的成員的情況下本會獲得的款額。

(7) 法院不得就損害賠償判給會與作品的正常利用造成衝突或會不合理地損害版權擁有人的合法權益的款額。

[*比照 1988 c. 48 s. 136 U.K.*]

第 IX 分部

版權審裁處

審裁處

169. 版權審裁處

- (1) 現設立一審裁處，名為版權審裁處。
- (2) 該審裁處由以下成員組成，而所有該等成員均由總督委任——
 - (a) 一名主席和一名副主席，而該兩人均須具備根據《地方法院條例》(第 336 章)第 5 條獲委任為地方法院法官的資格；及
 - (b) 7 名普通成員，而每名該等成員均以其個人身分獲委任。

170. Membership of Tribunal

(1) The members of the Copyright Tribunal shall hold and vacate office in accordance with their terms of appointment, subject to the following provisions.

(2) A member of the Tribunal may resign his office by notice in writing to the Governor.

(3) The Governor may by notice in writing to the member concerned remove him from office if—

- (a) he has become bankrupt or made an arrangement with his creditors;
- (b) he is incapacitated by physical or mental illness; or
- (c) he is in the opinion of the Governor otherwise unable or unfit to perform his duties as member.

(4) If a member of the Tribunal is by reason of illness, absence or other reasonable cause for the time being unable to perform the duties of his office, either generally or in relation to particular proceedings, the Governor may appoint a person who would be eligible for appointment to that office to discharge his duties for a period not exceeding 6 months at one time or, as the case may be, in relation to those proceedings.

(5) A person appointed under subsection (4) shall have during the period of his appointment, or in relation to the proceedings in question, the same powers as the person in whose place he is appointed.

[*cf. 1988 c. 48 s. 146 U.K.*]

171. Financial provisions

(1) There shall be paid to the members of the Copyright Tribunal who are not public officers such remuneration (whether by way of salaries or fees), and such allowances, as the Secretary for Trade and Industry may determine.

(2) The Secretary for Trade and Industry may appoint such number of staff for the Tribunal and at such remuneration as he may determine.

(3) The remuneration and allowances of members of the Tribunal, the remuneration of any staff and such other expenses of the Tribunal as the Secretary for Trade and Industry may determine shall be paid out of the general revenue.

[*cf. 1988 c. 48 s. 147 U.K.*]

172. Constitution for purposes of proceedings

(1) For the purposes of any proceedings the Copyright Tribunal shall consist of—

170. 審裁處的成員

(1) 版權審裁處的成員須在符合以下條文的規定下，按照其委任條款任職和離職。

(2) 審裁處的成員可藉向總督發出的書面通知而辭職。

(3) 如有關成員有以下情況，總督可藉向該成員發出書面通知將其免職——

- (a) 他已破產或已與其債權人作出債務償還安排；
- (b) 他因身體或精神上的疾病而無行為能力；或
- (c) 總督認為他因其他理由不能夠或不適合履行其作為成員的職責。

(4) 如審裁處的成員因疾病、缺勤或其他合理原因而在當其時不能夠一般地或就個別法律程序履行其職位的職責，則總督可委任一名具備獲委任擔任該職位的資格的人，在一段不超過 6 個月的期間內或就該等法律程序（視屬何情況而定）執行該成員的職責。

(5) 根據第 (4) 款獲委任以代替另一人的人在其獲委任的期間或就有關的法律程序而具有的權力，須與該另一人所具有的相同。

[*比照 1988 c. 48 s. 146 U.K.*]

171. 財政條文

(1) 並非公職人員的版權審裁處成員須獲付酬金（不論以薪金或費用形式）及津貼，而該酬金及津貼由工商司釐定。

(2) 工商司可為審裁處委任職員，而該等職員的人數及酬金由工商司釐定。

(3) 審裁處成員的酬金和津貼、其任何職員的酬金，以及工商司所釐定的審裁處的其他開支，均由政府一般收入撥付。

[*比照 1988 c. 48 s. 147 U.K.*]

172. 為法律程序的目的之組成

(1) 為任何法律程序的目的，版權審裁處須由以下成員組成——

- (a) a chairman, who is either the Chairman or the Deputy Chairman of the Tribunal; and
- (b) 2 or more ordinary members.
- (2) If the members of the Tribunal dealing with any matter are not unanimous, the decision shall be taken by majority vote; and if, in such a case, the votes are equal the chairman shall have a further, casting vote.
- (3) Where part of any proceedings before the Tribunal has been heard and one or more members of the Tribunal are unable to continue, the Tribunal remains duly constituted for the purpose of those proceedings so long as the number of members is not reduced to less than 3.
- (4) If the chairman is unable to continue, the Chairman of the Tribunal shall—
- (a) appoint one of the remaining members to act as chairman; and
- (b) appoint a suitably qualified person to attend the proceedings and advise the members on any questions of law arising.
- (5) A person is “suitably qualified” for the purposes of subsection (4)(b) if he is, or is eligible for appointment as, a Deputy Chairman of the Tribunal.
- [cf. 1988 c. 48 s. 148 U.K.]

Jurisdiction and procedure

173. Jurisdiction of Tribunal

The Copyright Tribunal has jurisdiction under this Part to hear and determine proceedings under—

- (a) section 14 (determination of award to employee for use of work outside reasonable contemplation);
- (b) section 155, 156 or 157 (reference of licensing scheme);
- (c) section 158 or 159 (application with respect to entitlement to licence under licensing scheme);
- (d) section 162, 163 or 165 (reference or application with respect to licensing by licensing body);
- (e) paragraph 6 of Schedule 2 (contrary rights);
- (f) paragraph 14(3) of Schedule 2 (acts infringing copyright).
- [cf. 1988 c. 48 s. 149 U.K.]

174. General power to make rules

- (1) The Chief Justice may make rules for regulating proceedings before the Copyright Tribunal, as to the fees chargeable in respect of such proceedings, and as to the enforcement of orders made by the Tribunal.
- (2) The rules may apply in relation to the Tribunal any of the provisions of the Arbitration Ordinance (Cap. 341) and any provisions so applied must be set out in or scheduled to the rules.

- (a) 一名主席，他須是審裁處主席或審裁處副主席；及
- (b) 2 名或多於 2 名普通成員。
- (2) 如審裁處成員就任何事項的處理不能達致一致意見，則須以過半數票取決，而在此情況下如票數相等，主席有權再投一票作為決定票。
- (3) 凡在審裁處席前進行的任何法律程序的聆訊已進行了一部分，但有一名或多於一名審裁處成員不能繼續聆訊，則只要審裁處成員的人數沒有減至不足 3 名，就該等法律程序而言，審裁處仍屬妥為組成。
- (4) 如主席不能繼續進行聆訊，則審裁處主席須——
- (a) 委任餘下的其中一名成員以主席身分行事；及
- (b) 委任一名具備適合資格的人出席有關法律程序，並就其中產生的任何法律問題向成員提供意見。
- (5) 就第 (4)(b) 款而言，“具備適合資格”指本身是審裁處副主席或具備獲委任為審裁處副主席的資格的人。

[比照 1988 c. 48 s. 148 U.K.]

司法管轄權和程序

173. 審裁處的司法管轄權

版權審裁處根據本部具有就根據以下各條文提出的法律程序進行聆訊和作出裁定的司法管轄權——

- (a) 第 14 條 (對就作品的不能合理地預料的使用而向僱員支付的償金作出裁定)；
- (b) 第 155、156 或 157 條 (特許計劃下的特許的轉介)；
- (c) 第 158 或 159 條 (就有權獲得特許計劃下的特許而提出的申請)；
- (d) 第 162、163 或 165 條 (就特許機構的特許而作出轉介或提出申請)；
- (e) 附表 2 第 6 段 (反對的權利)；
- (f) 附表 2 第 14(3) 段 (侵犯版權的作為)。

[比照 1988 c. 48 s. 149 U.K.]

174. 訂立規則的一般權力

- (1) 首席大法官可就規管在版權審裁處席前進行的法律程序、就該等法律程序而可徵收的費用及就強制執行該審裁處作出的命令，訂立規則。
- (2) 該等規則可就審裁處而應用《仲裁條例》(第 341 章)的任何條文，而任何如此應用的條文必須在規則中列明或列於其附表中。

- (3) The rules may—
- (a) prohibit the Tribunal from entertaining a reference under section 155, 156 or 157 by a representative organization unless the Tribunal is satisfied that the organization is reasonably representative of the class of persons which it claims to represent;
 - (b) specify the parties to any proceedings and enabling the Tribunal to make a party to the proceedings any person or organization satisfying the Tribunal that they have a substantial interest in the matter;
 - (c) require the Tribunal to give the parties to proceedings an opportunity to state their case, in writing or orally as the rules may provide.
- (4) The rules may make provision for regulating or prescribing any matter incidental to or consequential upon any appeal from the Tribunal under section 176 (appeal to the court on point of law).

[cf. 1988 c. 48 s. 150 U.K.]

175. Costs, proof of orders, etc.

- (1) The Copyright Tribunal may, in special circumstances, order that the costs of a party to proceedings before it shall be paid by such other party as the Tribunal may direct; and the Tribunal may tax or settle the amount of the costs, or direct in what manner they are to be taxed.
- (2) The Chief Justice may by rules prescribe the special circumstances for the purpose of subsection (1).
- (3) A document purporting to be a copy of an order of the Tribunal and to be certified by the chairman to be a true copy is, in any proceedings, sufficient evidence of the order unless the contrary is proved.

[cf. 1988 c. 48 s. 151 U.K.]

Appeals

176. Appeal to court on point of law

- (1) An appeal lies on any point of law arising from a decision of the Copyright Tribunal to the High Court.
- (2) The rules made under section 174 may limit the time within which an appeal may be brought.
- (3) The rules made under that section may provide—
- (a) for suspending, or authorizing or requiring the Tribunal to suspend, the operation of orders of the Tribunal in cases where its decision is appealed against;

- (3) 規則可——

- (a) 規定除非審裁處信納某代表組織就其聲稱代表的類別的人而言是合理地有代表性的，否則禁止審裁處受理由該代表組織根據第 155、156 或 157 條作出的轉介；
- (b) 指明任何法律程序中的各方，並賦權審裁處使任何令審裁處信納對有關事項有實質利害關係的任何人或組織成為該法律程序的一方；
- (c) 規定審裁處須給予法律程序中的各方按規則所規定的書面或口頭方式呈述其案件的機會。

- (4) 規則可就為規管或訂明根據第 176 條（就法律論點而向法院提出上訴）對審裁處的裁決提出上訴的任何附帶或相應事項，訂立條文。

[比照 1988 c. 48 s. 150 U.K.]

175. 訟費、命令的證明等

- (1) 在特殊情況下，版權審裁處可命令在其席前進行的法律程序中任何一方的訟費須由審裁處所指示的任何其他一方繳付，而審裁處亦可就訟費的款額作出評定或結算，或指示訟費須以何種方式評定。
- (2) 首席大法官可藉規則訂明第 (1) 款所指的特殊情况。
- (3) 一份文件如看來是審裁處命令的副本，並看來是由主席核證為真確副本，則在沒有相反證明的情況下，該文件在任何法律程序中須為該命令的充分證據。

[比照 1988 c. 48 s. 151 U.K.]

上訴

176. 就法律論點向法院提出上訴

- (1) 由版權審裁處的裁決所引起的任何法律論點的上訴，須向高等法院提出。
- (2) 根據第 174 條訂立的規則可限定任何上訴須在某段時間內提出。
- (3) 根據該條訂立的規則可就以下事宜作出規定——
 - (a) 在審裁處的裁決遭上訴的個案中，暫停實施審裁處的命令或授權或規定審裁處暫停實施其命令；

- (b) for modifying in relation to an order of the Tribunal whose operation is suspended the operation of any provision of this Part as to the effect of the order;
 - (c) for the publication of notices or the taking of other steps for securing that persons affected by the suspension of an order of the Tribunal will be informed of its suspension.
- [cf. 1988 c. 48 s. 152 U.K.]*

DIVISION X

QUALIFICATION FOR COPYRIGHT PROTECTION

177. Qualification for copyright protection

- (1) Copyright subsists in a work if—
 - (a) the author satisfies the qualification requirements set out in section 178; or
 - (b) it is published in Hong Kong or elsewhere; or
 - (c) in the case of a broadcast or cable programme, it is made or sent from Hong Kong or elsewhere.
 - (2) If the qualification requirements of this Division, or section 182, 184 or 188 (Government copyright, Legislative Council copyright or copyright of certain international organizations) are once satisfied in respect of a work, copyright does not cease to subsist by reason of any subsequent event.
- [cf. 1988 c. 48 s. 153 U.K.]*

178. Qualification by reference to author

- (1) A work qualifies for copyright protection if the author was at the material time—
 - (a) an individual domiciled or 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.
- (2) A work of joint authorship qualifies for copyright protection if at the material time any of the authors satisfies the requirements of subsection (1); but where a work qualifies for copyright protection only under this section, only those authors who satisfy those requirements are taken into account for the purposes of—
 - sections 13 and 14(1) (first ownership of copyright; entitlement of author or author's employer);

- (b) 就暫停實施的審裁處的命令的效力而對本部任何條文的實施作出變通；
- (c) 為確保因審裁處的命令暫停實施而受影響的人將會獲告知該項暫停實施而刊登通知或採取其他步驟。

[比照 1988 c. 48 s. 152 U.K.]

第 X 分部

享有版權保護所須具備的資格

177. 享有版權保護所須具備的資格

- (1) 如作品符合以下條件，則有版權存在——
 - (a) 作者符合第 178 條所列的資格規定；或
 - (b) 該作品在香港或其他地方發表；或
 - (c) 如該作品屬廣播或有線傳播節目，該作品自香港或其他地方作出或發送。
- (2) 如某作品曾符合本分部或第 182、184 或 188 條(政府版權、立法局版權或某些國際組織的版權)所列的資格規定，則該作品的版權不會因任何其後發生的事情而停止存在。

[比照 1988 c. 48 s. 153 U.K.]

178. 藉作者而獲得的資格

- (1) 如某作品的作者在關鍵時間——
 - (a) 是以香港或其他地方為居籍或在香港或其他地方居住或在香港或其他地方有居留權的個人；或
 - (b) 是根據任何國家、地區或地方的法律成立為法團的團體，
 則該作品享有版權保護的資格。
- (2) 如合作作品的任何作者在關鍵時間符合第 (1) 款所列的規定，則該作品享有版權保護的資格；但如某作品只根據本條方享有版權保護的資格，則就以下條文而言，只有符合第 (1) 款規定的作者方會獲顧及——
 - 第 13 及 14(1) 條(版權的第一擁有人；作者或作者的僱主可享有的權利)；

sections 17 and 19 (duration of copyright) and section 11(4) (meaning of “unknown authorship”) so far as it applies for the purposes of sections 17 and 19; and sections 66 and 75 (acts permitted on assumptions as to expiry of copyright, etc.).

[*cf.* 1988 c. 48 s. 154 U.K.]

179. Ships, aircraft and hovercraft registered in Hong Kong

This Part applies to things done on a ship, aircraft or hovercraft registered under the law of Hong Kong as it applies to things done in Hong Kong.

[*cf.* 1988 c. 48 s. 162 U.K.]

180. Denial of copyright protection to people of countries, etc. not giving adequate protection to Hong Kong works

(1) Subject to subsection (4), if it appears to the Governor in Council that Hong Kong works or one or more classes of those works are not adequately protected in a country, territory or area as a result of any prejudicial treatment given to those works by that country, territory or area, the Governor in Council may by regulation in accordance with this section restrict the rights conferred by this Part in relation to works of authors connected with that country, territory or area.

(2) The Governor in Council shall designate in the regulation the country, territory or area concerned and provide that, for the purposes specified in the regulation, a work first published in that country, territory or area after a date specified in the regulation does not qualify for copyright protection by virtue of such publication if at the time of that publication the author is—

- (a) an individual domiciled or resident or having a right of abode in that country, territory or area (and not at the same time domiciled or resident or having a right of abode in Hong Kong); or
- (b) a body incorporated under the law of that country, territory or area,

and the regulation may make such provision for all the purposes of this Part or for such purposes as are specified in the regulation, and either generally or in relation to such class of cases as are specified in the regulation, having regard to the nature and extent of that prejudicial treatment referred to in subsection (1).

(3) In this section “Hong Kong works” (香港作品) means copyright works of which the author was at the material time—

第 17 及 19 條 (版權的期限) 及就第 17 及 19 條而適用的第 11(4) 條 (“作者不為人知”的涵義); 及第 66 及 75 條 (基於關於版權期限屆滿等的假設而允許作出的作為)。

[*比照* 1988 c. 48 s. 154 U.K.]

179. 在香港註冊的船舶、航空器及氣墊船

本部適用於在根據香港法律而註冊的船舶、航空器及氣墊船上作出的事情，猶如其適用於在香港作出的事情一樣。

[*比照* 1988 c. 48 s. 162 U.K.]

180. 對於某些不給予香港作品足夠保護的國家的人民等不給予版權保護

(1) 除第 (4) 款另有規定外，總督會同行政局如覺得香港作品或其類或多於一類香港作品因受到某國家、地區或地方不利的待遇而在該國家、地區或地方沒有得到足夠的保護，則總督會同行政局可藉規例而按照本條，限制本部就與該國家、地區或地方有關的作者的作品的作品而賦予的權利。

(2) 總督會同行政局須在規例中指定有關的國家、地區或地方，並須規定就規例所指明的目的而言，在規例所指明的日期之後在該國家、地區或地方首次發表的作品作者如在該項發表時屬下列身分，則該項作品並不具備憑藉發表而享有版權保護的資格——

- (a) 作者是以該國家、地區或地方為其居籍或在該國家、地區或地方居住，或有該國家、地區或地方的居留權 (但並非同時以香港為居籍或在香港居住或有香港的居留權) 的個人；或
- (b) 作者是根據該國家、地區或地方的法律成立為法團的團體，

而規例可在顧及第 (1) 款所提述的不利待遇的性質及程度後，為本部的全部目的或為規例所指明的某些目的，一般地或就規例所指明的個案種類，訂定條文。

(3) 在本條中，“香港作品” (Hong Kong works) 指版權作品，而其作者在關鍵時間——

- (a) an individual domiciled or resident or having a right of abode in Hong Kong; or
- (b) a body incorporated under the law of Hong Kong.

(4) The Governor in Council shall not exercise his power under this section in relation to a country, territory or area which is a party to a bilateral or multilateral copyright or related right convention to which Hong Kong is also a party or the application of which has been extended to Hong Kong.

[*cf.* 1988 c. 48 s. 160 U.K.]

181. Meaning of first publication and material time

(1) For the purposes of section 180, publication in one country, territory or area is still regarded as first publication if simultaneous publication occurs elsewhere; and for this purpose publication elsewhere within the previous 30 days is treated as simultaneous.

(2) For the purposes of sections 178 and 180, the material time in relation to a literary, dramatic, musical or artistic work is—

- (a) in the case of an unpublished work, when the work was made or, if the making of the work extended over a period, a substantial part of that period;
- (b) in the case of a published work, when the work was first published or, if the author had died before that time, immediately before his death.

(3) For the purposes of sections 178 and 180, the material time in relation to other descriptions of work is as follows—

- (a) in the case of a sound recording or film, when it was made;
- (b) in the case of a broadcast, when the broadcast was made;
- (c) in the case of a cable programme, when the programme was included in a cable programme service;
- (d) in the case of the typographical arrangement of a published edition, when the edition was first published.

[*cf.* 1988 c. 48 ss. 154 & 155 U.K.]

DIVISION XI

MISCELLANEOUS AND GENERAL

Government and Legislative Council copyright

182. Government copyright

(1) Where a work is made by an officer of the Government in the course of his duties—

- (a) 是以香港為其居籍或在香港居住或有香港的居留權的個人；或
- (b) 是根據香港法律成立為法團的團體。

(4) 總督會同行政局不得就香港亦是締約方或延伸適用於香港的雙邊或多邊版權或有關權利的公約的締約國家、地區或地方行使其在本條下的權力。

[*比照* 1988 c. 48 s. 160 U.K.]

181. 首次發表及關鍵時間的涵義

(1) 就第 180 條而言，在某國家、地區或地方的發表雖然與在其他地方的發表同時作出，該發表仍視為首次發表；就此目的而言，於發表日期前 30 日內在其他地方的發表，亦視為同時發表。

(2) 就第 178 及 180 條而言，關乎文學作品、戲劇作品、音樂作品或藝術作品的關鍵時間為——

- (a) 就未發表的作品而言，指製作該作品的時間，如其製作歷時一段期間，指該期間中相當大的部分；
- (b) 就已發表的作品而言，指作品首次發表的時間，如作者已在該時間前死亡，則指緊接他死亡之前的時間。

(3) 就第 178 及 180 條而言，關乎其他類別的作品的關鍵時間如下——

- (a) 就聲音紀錄或影片而言，指其製作的時間；
- (b) 就廣播而言，指作出廣播的時間；
- (c) 就有線傳播節目而言，指該節目包括在有線傳播節目服務內的時間；
- (d) 就已發表版本的排印編排而言，指該版本首次發表的時間。

[*比照* 1988 c. 48 ss. 154 & 155 U.K.]

第 XI 分部

雜項及一般條文

政府版權及立法局版權

182. 政府版權

(1) 凡某作品是由政府人員在執行其職責的過程中製作的——

- (a) the work qualifies for copyright protection notwithstanding section 177 (ordinary requirement as to qualification for copyright protection); and
- (b) the Government is the first owner of any copyright in the work.
- (2) Copyright in such a work is referred to in this Part as “Government copyright”, notwithstanding that it may be, or have been, assigned to another person.
- (3) Government copyright in a work continues to subsist—
- (a) until the end of the period of 125 years from the end of the calendar year in which the work was made; or
- (b) if the work is published commercially before the end of the period of 75 years from the end of the calendar year in which it was made, until the end of the period of 50 years from the end of the calendar year in which it was first so published.
- (4) In the case of a work of joint authorship where one or more but not all of the authors are persons falling within subsection (1), this section applies only in relation to those authors and the copyright subsisting by virtue of their contribution to the work.
- (5) Except as mentioned above, and subject to any express exclusion elsewhere in this Part, the provisions of this Part apply in relation to Government copyright as to other copyright.
- (6) This section does not apply to a work if, or to the extent that, Legislative Council copyright subsists in the work (see sections 184 and 185).
[*cf.* 1988 c. 48 s. 163 U.K.]

183. Copyright in Ordinances

- (1) The Government is entitled to copyright in every Ordinance.
- (2) The copyright subsists from the date of publication in the Gazette until the end of the period of 50 years from the end of the calendar year of publication.
- (3) References in this Part to Government copyright (except in section 182) include copyright under this section; and, except as mentioned above, the provisions of this Part apply in relation to copyright under this section as to other Government copyright.
- (4) No other copyright, or right in the nature of copyright, subsists in an Ordinance.
[*cf.* 1988 c. 48 s. 164 U.K.]

184. Legislative Council copyright

- (1) Where a work is made by or under the direction or control of the Legislative Council—

- (a) 則儘管有第 177 條(享有版權保護所須具備的資格的一般規定)的規定，該作品仍具備版權保護的資格；及
- (b) 政府是該作品的任何版權的第一擁有人。
- (2) 上述作品的版權，儘管可能會轉讓或已經轉讓予另一人，在本部中均稱為“政府版權”。
- (3) 作品的政府版權按以下規定持續存在——
- (a) 如該項作品於某公曆年製作，則政府版權持續存在直至自該年年終起計的 125 年期間完結為止；或
- (b) 如該作品於某公曆年製作，而該作品在自該年年終起計的 75 年期間完結之前已於另一公曆年首次作商業發表，則該作品的政府版權持續存在直至自該另一年年終起計的 50 年期間完結為止。
- (4) 就合作作品而言，凡其中一名或多於一名(但並非所有)作者屬第(1)款所指範圍內的人，則本條只就該等作者以及憑藉該等作者對作品的貢獻而存在的版權而適用。
- (5) 除以上提及的之外以及在本部另有明訂的摒除條文的規限下，本部的條文就政府版權而適用，一如其就其他版權而適用一樣。
- (6) 如任何作品有立法局版權存在，則本條不適用於該作品；如任何作品在某程度上有立法局版權存在，則本條在該程度上不適用於該作品(參閱第 184 及 185 條)。
[*比照* 1988 c. 48 s. 163 U.K.]

183. 條例的版權

- (1) 政府享有每一條條例的版權。
- (2) 如某條例於某公曆年在憲報刊登，則該條例的版權由條例在憲報刊登的日期起存在，直至自該年年終起計的 50 年期間完結為止。
- (3) 在本部中，凡提述政府版權(第 182 條除外)，即包括本條所指的版權，而除以上提及的之外，本部的條文就本條所指的版權而適用，一如其就其他政府版權而適用一樣。
- (4) 任何條例均沒有其他版權或屬版權性質的權利存在。
[*比照* 1988 c. 48 s. 164 U.K.]

184. 立法局版權

- (1) 凡某作品是由立法局製作的或在立法局的指示或控制下製作的——

- (a) the work qualifies for copyright protection notwithstanding section 177 (ordinary requirement as to qualification for copyright protection); and
- (b) the Legislative Council is the first owner of any copyright in the work.
- (2) Copyright in such a work is referred to in this Part as “Legislative Council copyright”, notwithstanding that it may be, or have been, assigned to another person.
- (3) Legislative Council copyright in a literary, dramatic, musical or artistic work continues to subsist until the end of the period of 50 years from the end of the calendar year in which the work was made.
- (4) For the purposes of this section, works made by or under the direction or control of the Legislative Council include—
- (a) any work made by an officer or employee of the Legislative Council in the course of his duties; and
- (b) any sound recording, film, live broadcast or live cable programme of the proceedings of the Legislative Council,
- but a work is not regarded as made by or under the direction or control of the Legislative Council by reason only of its being commissioned by or on behalf of the Legislative Council.
- (5) In the case of a work of joint authorship where one or more but not all of the authors are acting on behalf of, or under the direction or control of the Legislative Council, this section applies only in relation to those authors and the copyright subsisting by virtue of their contribution to the work.
- (6) Except as mentioned above, and subject to any express exclusion elsewhere in this Part, the provisions of this Part apply in relation to Legislative Council copyright as to other copyright.

[cf. 1988 c. 48 s. 165 U.K.]

185. Copyright in bills

- (1) Copyright in every bill, other than a member’s bill, introduced into the Legislative Council belongs, in accordance with the following provisions, to the Government.
- (2) Copyright in a member’s bill belongs to the Legislative Council.
- (3) Copyright under this section subsists from the date of the first publication of a bill in the Gazette until—
- (a) the bill receives assent; or
- (b) if the bill does not receive assent, the end of the period of 50 years from the end of the calendar year of the first publication.
- (4) References in this Part to Government copyright (except in section 182) include copyright under subsection (1); and, except as mentioned above, the provisions of this Part apply in relation to copyright under subsection (1) as to other Government copyright.

- (a) 則儘管有第 177 條 (享有版權保護所須具備的資格的一般規定) 的規定，該作品仍具備版權保護的資格；及
- (b) 立法局是該作品的任何版權的第一擁有人。
- (2) 上述作品的版權，儘管可能會轉讓或已經轉讓予另一人，在本部中均稱為“立法局版權”。
- (3) 如文學作品、戲劇作品、音樂作品或藝術作品於某公曆年製作，則該項作品的立法局版權持續存在，直至自該年年終起計的 50 年期間完結為止。
- (4) 就本條而言，由立法局製作的或在立法局的指示或控制下製作的作品包括——
- (a) 立法局任何人員或僱員在執行其職責的過程中製作的任何作品；及
- (b) 立法局程序的任何聲音紀錄、影片、即場廣播或即場有線傳播節目，但任何作品並不僅因是立法局委託製作或是代立法局委託製作，而被視為由立法局製作或在立法局的指示或控制下製作。
- (5) 就合作作品而言，凡其中一名或多於一名 (但並非所有) 作者是代立法局行事的或是在立法局的指示或控制下行事的，則本條只就該等作者以及憑藉該等作者對作品的貢獻而存在的版權而適用。
- (6) 除以上提及的之外以及在本部另有明訂的摒除條文的規限下，本部的條文就立法局版權而適用，一如其就其他版權而適用一樣。

[比照 1988 c. 48 s. 165 U.K.]

185. 條例草案的版權

- (1) 除議員條例草案外，每一條提交立法局的條例草案的版權均按照以下條文屬政府所有。
- (2) 議員條例草案的版權屬立法局所有。
- (3) 如條例草案於某公曆年首次在憲報刊登，則本條所指的版權由條例草案首次在憲報刊登的日期起存在——
- (a) 直至該條例草案獲得批准為止；或
- (b) 如該條例草案沒有獲得批准，則直至自該年年終起計的 50 年期間完結為止。
- (4) 在本部中，凡提述政府版權 (第 182 條除外)，即包括第 (1) 款所指的版權；而除以上提及者外，本部的條文就第 (1) 款所指的版權而適用，一如其就其他政府版權而適用一樣。

(5) References in this Part to Legislative Council copyright (except in section 184) include copyright under subsection (2); and, except as mentioned above, the provisions of this Part apply in relation to copyright under subsection (2) as to other Legislative Council copyright.

(6) No other copyright, or right in the nature of copyright, subsists in a bill after copyright has once subsisted under this section; but without prejudice to the subsequent operation of this section in relation to a bill which, not having passed in one session, is reintroduced in a subsequent session.

(7) In this section “member’s bill” (議員條例草案) means a bill, other than a Government measure, which is to be presented by a Member of the Legislative Council.

[*cf.* 1988 c. 48 s. 166 U.K.]

186. Legislative Council: supplementary provisions with respect to copyright

(1) For the purposes of holding, dealing with and enforcing copyright, and in connection with all legal proceedings relating to copyright, the Legislative Council is to be treated as having the legal capacities of a body corporate, which is not affected by a dissolution of the Legislative Council.

(2) The functions of the Legislative Council as owner of copyright are exercisable by the President on behalf of the Legislative Council; and if so authorized by the President, or in case of a vacancy in the office of President, those functions may be discharged by the Secretary General of the Legislative Council Secretariat.

(3) For this purpose a person who on the dissolution of the Legislative Council was President of the Legislative Council may continue to act until the corresponding appointment is made in the next session of the Legislative Council.

[*cf.* 1988 c. 48 s. 167 U.K.]

Other miscellaneous provisions

187. Groundless threat of proceedings in relation to parallel import

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

(5) 在本部中，凡提述立法局版權(第184條除外)，即包括第(2)款所指的版權；而除以上提及者外，本部的條文就第(2)款所指的版權而適用，一如其就其他立法局版權而適用一樣。

(6) 任何條例草案的版權一旦已根據本條存在，則該條例草案即沒有其他版權或屬版權性質的權利存在；但就未能在立法局的某一次會期獲通過而在其後的會期再度提交的條例草案而言，此規定並不損害本條其後就該等條例草案而實施。

(7) 在本條中，“議員條例草案”(member’s bill)指由一名立法局議員提交的不屬政府法案的條例草案。

[*比照* 1988 c. 48 s. 166 U.K.]

186. 立法局：關於版權的補充條文

(1) 就版權的持有、進行交易和強制執行而言，以及就與版權有關的所有法律程序而言，立法局須當作具有法人團體的法律行為能力，而該行為能力並不受立法局的解散影響。

(2) 立法局作為版權擁有人的職能可由立法局主席代立法局執行，而立法局主席如就此而授權，或在立法局主席的職位懸空的情況下，該等職能可由立法局秘書處的秘書長執行。

(3) 就此而言，在立法局解散時是立法局主席的人可繼續行事，直至相應的委任在立法局的下一次會期作出為止。

[*比照* 1988 c. 48 s. 167 U.K.]

其他雜項條文

187. 以提起與平行進口有關的法律程序作無理威脅

(1) 如有某作品的複製品僅憑藉第35(3)條而被指稱為侵犯版權複製品，則凡任何人威脅他人會就該作品的複製品而根據第30及31條提起侵犯版權的法律程序，則因該威脅而感到受屈的人可向法院申請以下任何一項或多於一項濟助——

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

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

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

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

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

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

188. Copyright vesting in international organizations

- (1) Where an original literary, dramatic, musical or artistic work—
 - (a) is made by an officer or employee of, or is published by, any international organization; and
 - (b) does not qualify for copyright protection under section 178 (qualification by reference to author),

copyright nevertheless subsists in the work by virtue of this section and the organization is the first owner of that copyright.

(2) Copyright of which an international organization is first owner by virtue of this section continues to subsist until the end of the period of 50 years from the end of the calendar year in which the work was made or such longer period as may be specified by the Governor by regulation under subsection (4).

(3) An international organization is deemed to have, and to have had at all material times, the legal capacities of a body corporate for the purpose of holding, dealing with and enforcing copyright, and in connection with all legal proceedings relating to copyright.

- (a) 表明該項威脅是無充分理由的宣布；
- (b) 禁止繼續作出該項威脅的強制令；
- (c) 他因該項威脅而蒙受任何損失的損害賠償。

(2) 如該人證明該威脅經作出，而他是因此而感到受屈的人，則他有權獲得所申索的濟助，但如被告人證明威脅要提起法律程序所針對的作為構成或假如作出本會構成該條所指的侵犯版權，則屬例外。

(3) 如僅就版權的存在一事作出通知，則不構成本條所指的以提起法律程序作威脅。

(4) 本條不得使大律師或律師就為代表其當事人而以其專業身分作出的作為而在根據本條提起的訴訟中被起訴。

(5) 根據本條而提起的訴訟中的被告人，可藉反申索而申請他在就原告人侵犯關乎有關威脅的版權而提起的另一宗訴訟中，會有權獲得的濟助，而在任何該等個案中，本條例關於提起侵犯版權訴訟的條文在作出必要的變通後，即就該訴訟而適用。

[*比照 1988 c. 48 s. 253 U.K.*]

188. 歸屬某些國際組織的版權

- (1) 凡原創文學作品、戲劇作品、音樂作品或藝術作品——

- (a) 是由任何國際組織的人員或僱員製作的，或是由該國際組織發表的；及
- (b) 並不具備根據第 178 條(藉作者而獲得的資格)享有版權保護的資格，則該作品憑藉本條仍然有版權存在，而該組織是該版權的第一擁有人。

(2) 凡有國際組織憑藉本條而成為某作品的版權的第一擁有人，如該作品於某公曆年製作，則該作品的版權持續存在，直至自該年年終起計的 50 年期間完結為止，或直至由總督根據第 (4) 款藉規例指明的較長期間完結為止。

(3) 就版權的持有、進行交易和強制執行而言，以及就與版權有關的所有法律程序而言，國際組織須當作具有法人團體的法律行為能力以及在所有關鍵時間一直具有該行為能力。

(4) The Governor may, for the purpose of complying with the international obligations applicable to Hong Kong make regulation specifying a period longer than 50 years for the purposes of this section in relation to any international organization.

[*cf. 1988 c. 48 s. 168 U.K.*]

189. Folklore, etc.: anonymous unpublished works

(1) Where in the case of an unpublished literary, dramatic, musical or artistic work of unknown authorship there is evidence that the author (or, in the case of a joint work, any of the authors) was a qualifying individual by connection with a country, territory or area outside Hong Kong, it is presumed, until the contrary is proved, that he was such a qualifying individual and that copyright accordingly subsists in the work, subject to the provisions of this Part.

(2) If under the law of that country, territory or area a body is appointed to protect and enforce copyright in such works, the Secretary for Trade and Industry may by regulation designate that body for the purposes of this section.

(3) A body so designated is recognized in Hong Kong as having authority to do in place of the copyright owner anything, other than assign copyright, which it is empowered to do under the law of that country; and it may, in particular, bring proceedings in its own name.

(4) In subsection (1) a “qualifying individual” (合資格的個人) means an individual who at the material time (within the meaning of section 178) was a person whose works qualified under that section for copyright protection.

(5) This section does not apply if there has been an assignment of copyright in the work by the author of which notice has been given to the designated body; and nothing in this section affects the validity of an assignment of copyright made, or licence granted, by the author or a person lawfully claiming under him.

[*cf. 1988 c. 48 s. 169 U.K.*]

190. Protection of Commissioner and authorized officers

(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 in good faith in connection with the carrying out of any of their duties under this Part.

(4) 總督可為遵從適用於香港的國際義務的目的，藉規例為施行本條就國際組織的版權期限指明較 50 年為長的期間。

[*比照 1988 c. 48 s. 168 U.K.*]

189. 民間傳說等：不具名的未發表作品

(1) 就作者不為人知並且未發表的文學作品、戲劇作品、音樂作品或藝術作品而言，凡有證據顯示其作者（或就合作作品而言，其中任何一名作者）藉與香港以外的國家、地區或地方的聯繫而成為合資格的個人，則在本部的條文的規限下，該作者即推定為一名合資格的個人，而該項作品的版權亦據此存在，直至相反證明成立為止。

(2) 如某機構根據該國家、地區或地方的法律獲委任以保護和強制執行該等作品的版權，則工商司可為本條的施行而藉規例指定該機構。

(3) 經如此指定的機構在香港獲承認為具有權限取代版權擁有人作出該機構根據該國家的法律獲賦權作出的任何事情（轉讓版權除外），並尤其可以其本身的名義提起法律程序。

(4) 在第(1)款中，“合資格的個人”(qualifying individual)指在關鍵時間(第178條所指的)其作品根據該條而具備版權保護資格的個人。

(5) 如作者已將該項作品的版權轉讓，並已將該轉讓通知指定機構，則本條不適用；本條並不影響由作者或由合法地藉作者提出申索的人作出的版權轉讓或批出的特許的法律效力。

[*比照 1988 c. 48 s. 169 U.K.*]

190. 總監及獲授權人員的保障

(1) 總監及獲授權人員無須為就執行其在本部下的任何職責而真誠地採取或真誠地遺漏採取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。

(2) The protection conferred by subsection (1) on the Commissioner and authorized officers in respect of any action taken or omitted to be taken in good faith in connection with the carrying out of those duties shall not affect in any manner any liability of the Government for that action taken or omitted to be taken.

Transitional provisions and savings

191. Transitional provisions and savings

Schedule 2 contains transitional provisions and savings relating to works made, and acts or events occurring, before the commencement of this Part, and otherwise with respect to the operation of the provisions of this Part.

[*cf. 1988 c. 48 s. 170 U.K.*]

192. Rights and privileges under other enactments or the common law

- (1) Nothing in this Part affects—
- (a) any right or privilege of any person under any enactment (except where the enactment is expressly repealed, amended or modified by this Ordinance);
 - (b) any right or privilege of the Government subsisting otherwise than under an enactment;
 - (c) any right or privilege of the Legislative Council;
 - (d) the right of the Government or any person deriving title from the Government to sell, use or otherwise deal with the articles forfeited under the law of Hong Kong;
 - (e) the operation of any rule of equity relating to breaches of trust or confidence.

(2) Subject to those savings, no copyright or right in the nature of copyright subsists otherwise than by virtue of this Part or some other enactment in that behalf.

(3) Nothing in this Part affects any rule of law preventing or restricting the enforcement of copyright, on grounds of public interest or otherwise.

(4) Nothing in this Part affects any right of action or other remedy, whether civil or criminal, available otherwise than under this Part in respect of acts infringing any of the rights conferred by Division IV (moral rights).

(5) The savings in subsection (1) have effect subject to sections 183(4) and 185(6) (copyright in Ordinances and bills: exclusion of other rights in the nature of copyright).

[*cf. 1988 c. 48 s. 171 U.K.*]

(2) 第(1)款就總監及獲授權人員執行上述職責而真誠地採取或真誠地遺漏採取任何行動而賦予他們的保障，並不以任何方式影響政府須為所採取或遺漏採取的行動所負上的任何法律責任。

過渡性條文及保留條文

191. 過渡性條文及保留條文

附表 2 載有過渡性條文及保留條文，該等條文關乎在本部生效前製作的作品以及所作出的作為或發生的事情，並在其他方面關乎本部條文的實施。

[*比照 1988 c. 48 s. 170 U.K.*]

192. 在其他成文法則或普通法下的權利和特權

- (1) 本部並不影響——
- (a) 任何人在任何成文法則下的任何權利或特權 (除非該成文法則已由本條例明文廢除、修訂或作出變通)；
 - (b) 並非在任何成文法則下存在的任何政府權利或特權；
 - (c) 立法局的任何權利或特權；
 - (d) 政府或任何從政府取得所有權的任何人出售或使用根據香港法律而被沒收的物品，或以其他方式進行該等物品的交易的權利；
 - (e) 關乎違反信託或破壞信用的任何衡平法規則的實施。
- (2) 除該等保留條文所規定外，並無任何版權或屬版權性質的權利是並非憑藉本部或就此而制定的成文法則而存在的。
- (3) 本部並不影響任何基於公眾利益或其他理由而阻止或限制強制執行版權的法律規則。
- (4) 本部並不影響就侵犯第 IV 分部 (精神權利) 所賦予的權利中的任何權利的作為而具有的任何不論屬民事或刑事的訴訟權或其他補救，而該訴訟權或其他補救是並非根據本部而具有的。
- (5) 第(1)款的保留條文在第 183(4) 及 185(6) 條 (條例和條例草案的版權：摒除其他屬版權性質的權利) 的規限下具有效力。

[*比照 1988 c. 48 s. 171 U.K.*]

Interpretation

193. General provisions as to construction

(1) This Part restates and amends the law of copyright, that is, the provisions of the Copyright Act 1956 (1956 c. 74 U.K.) as amended and extended to Hong Kong and the provisions of the Copyright Ordinance (Cap. 39), as amended.

(2) A provision of this Part which corresponds to a provision of the previous law shall not be construed as departing from the previous law merely because of a change of expression.

(3) Decisions under the previous law may be referred to for the purpose of establishing whether a provision of this Part departs from the previous law, or otherwise for establishing the true construction of this Part.

[*cf.* 1988 c. 48 s. 172 U.K.]

194. Construction of references to copyright owner

(1) Where different persons are (whether in consequence of a partial assignment or otherwise) entitled to different aspects of copyright in a work, the copyright owner for any purpose of this Part is the person who is entitled to the aspect of copyright relevant for that purpose.

(2) Where copyright (or any aspect of copyright) is owned by more than one person jointly, references in this Part to the copyright owner are to all the owners, so that, in particular, any requirement of the licence of the copyright owner requires the licence of all of them.

[*cf.* 1988 c. 48 s. 173 U.K.]

195. Meaning of “educational establishment” and related expressions

(1) The expression “educational establishment” (教育機構) means an educational establishment specified in Schedule 1.

(2) In relation to an educational establishment the expressions “teacher” (教師) and “pupil” (學生) in this Part include, respectively, any person who gives and any person who receives instruction.

(3) References in this Part to anything being done “on behalf of” an educational establishment are to its being done for the purposes of that establishment by any person.

(4) The Secretary for Education and Manpower may, by notice in the Gazette, amend Schedule 1.

[*cf.* 1988 c. 48 s. 174 U.K.]

釋義

193. 與解釋有關的一般規定

(1) 本部重新述明並修訂版權的法律，該法律即《1956年版權法令》(1956 c. 74 U.K.) 中經修訂並延伸適用於香港的條文及經修訂的《版權條例》(第 39 章) 的條文。

(2) 本部的條文凡與過往的法律的某一條文相對應，不得僅因詞句的改變而解釋為偏離過往的法律。

(3) 為確定本部的條文是否偏離過往的法律，或為確定本部條文的真正解釋，可參照根據過往的法律而作出的裁決。

[*比照* 1988 c. 48 s. 172 U.K.]

194. 對版權擁有人的提述的解釋

(1) 凡不同的人就一項作品不同方面的版權具有權利 (不論是由於局部轉讓或其他原因)，則就本部某目的而言的版權擁有人即為有權享有與該目的有關的方面的版權的人。

(2) 凡版權 (或版權的任何方面) 是由多於一人共同擁有的，則在本部中凡提述版權擁有人，即提述所有該等擁有人；故此特別是在須要取得版權擁有人特許的情況下，須要取得所有該等擁有人的特許。

[*比照* 1988 c. 48 s. 173 U.K.]

195. “教育機構”和相關詞句的涵義

(1) “教育機構” (educational establishment) 指在附表 1 中指明的教育機構。

(2) 就教育機構而言，在本部中的“教師” (teacher) 和“學生” (pupil)，分別包括任何教學者和接受教學者。

(3) 在本部中，凡提述代某一教育機構作出任何事情，即指由任何人為該教育機構的目的而作出該等事情。

(4) 教育統籌司可藉憲報公告修訂附表 1。

[*比照* 1988 c. 48 s. 174 U.K.]

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

(1) In this Part “publication” (發表), in relation to a work, means the issue or making available of copies of the work to the public; and related expressions are construed accordingly.

(2) In this Part “commercial publication” (商業發表), in relation to a literary, dramatic, musical or artistic work means issuing or making available copies of the work to the public at a time when copies made in advance of the receipt of orders are generally available to the public, and related expressions are construed accordingly.

(3) In the case of a work of architecture in the form of a building, or an artistic work incorporated in a building, construction of the building is treated as equivalent to publication of the work.

(4) The following do not constitute publication for the purposes of this Part and references to commercial publication are construed accordingly—

- (a) in the case of a literary, dramatic or musical work—
 - (i) the performance of the work; or
 - (ii) the broadcasting of the work or its inclusion in a cable programme service;
- (b) in the case of an artistic work—
 - (i) the exhibition of the work;
 - (ii) the issue or making available to the public of copies of a graphic work representing, or of photographs of, a work of architecture in the form of a building or a model for a building, a sculpture or a work of artistic craftsmanship;
 - (iii) the issue or making available to the public of copies of a film including the work; or
 - (iv) the broadcasting of the work or its inclusion in a cable programme service;
- (c) in the case of a sound recording or film—
 - (i) the work being played or shown in public; or
 - (ii) the broadcasting of the work or its inclusion in a cable programme service.

(5) References in this Part to publication or commercial publication do not include publication which is merely colourable and not intended to satisfy the reasonable requirements of the public.

(6) No account is taken for the purposes of this section of any unauthorized act.

[*cf.* 1988 c. 48 s. 175 U.K.]

196. “發表”和“商業發表”的涵義

(1) 在本部中，“發表”(publication)就作品而言，指向公眾發放或提供該作品的複製品；而相關詞句亦據此解釋。

(2) 在本部中，“商業發表”(commercial publication)就文學作品、戲劇作品、音樂作品或藝術作品而言，指在收到定單前已預先製作的該等作品的複製品普遍地提供予公眾的時候向公眾發放或提供該等複製品，而相關詞句亦據此解釋。

(3) 就以建築物形式的建築作品而言，或就包含於建築物內的藝術作品而言，該建築物的建造即視作等同於該項作品的發表。

(4) 就本部而言，以下各項不構成發表，而凡提述商業發表，亦據此解釋——

- (a) 如屬文學作品、戲劇作品或音樂作品——
 - (i) 表演該作品；或
 - (ii) 廣播該作品或將其包括在有線傳播節目服務內；
 - (b) 如屬藝術作品——
 - (i) 展覽該作品；
 - (ii) 向公眾發放或提供表述建築物形式或建築物模型形式的建築作品的平面美術作品的複製品、向公眾發放或提供表述雕塑品或美術工藝作品的平面美術作品的複製品，或向公眾發放或提供該建築作品、雕塑品或美術工藝作品的照片；
 - (iii) 向公眾發放或提供包括該作品在內的影片的複製品；或
 - (iv) 廣播該作品或將其包括在有線傳播節目服務內；
 - (c) 如屬聲音紀錄或影片——
 - (i) 公開播放或放映該作品；或
 - (ii) 廣播該作品或將其包括在有線傳播節目服務內。
- (5) 在本部中，凡提述發表或商業發表，並不包括僅屬似是而用意並非為滿足公眾的合理要求的發表。
- (6) 就本條而言，任何未經授權的作為並沒有予以顧及。

[*比照* 1988 c. 48 s. 175 U.K.]

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

(1) The requirement in the following provisions that an instrument be signed by or on behalf of a person is also satisfied in the case of a body corporate by the affixing of its seal—

- section 90(3)(b) (assertion by licensor of right to identification of author in case of public exhibition of copy made in pursuance of the licence);
- section 101(3) (assignment of copyright);
- section 102(1) (assignment of future copyright);
- section 103(1) (grant of exclusive licence).

(2) The requirement in the following provisions that an instrument be signed by a person is satisfied in the case of a body corporate by signature on behalf of the body or by the affixing of its seal—

- section 90(2)(b) (assertion by instrument in writing of right to have author identified);
- section 98(2) (waiver of moral rights).

[*cf.* 1988 c. 48 s. 176 U.K.]

198. Minor definitions

In this Part—

“article” (文章), in the context of an article in a periodical, includes an item of any description;

“article in transit” (過境物品) means an article which—

- (a) is brought into Hong Kong solely for the purpose of taking it out of Hong Kong; and
- (b) remains at all times in or on the vessel or aircraft in or on which it is brought into Hong Kong;

“authorized officer” (獲授權人員) means any public officer authorized in writing by the Commissioner to exercise any of the powers and perform any of the duties conferred or imposed on an authorized officer under this Ordinance;

“business” (業務) includes a trade or profession;

“collective work” (匯集作品) means—

- (a) a work of joint authorship; or
- (b) a work in which there are distinct contributions by different authors or in which works or parts of works of different authors are incorporated;

“Commissioner” (總監) means the Commissioner of Customs and Excise and any Deputy or Assistant Commissioner of Customs and Excise;

“computer-generated” (電腦產生), in relation to a work, means that the work is generated by computer in circumstances such that there is no human author of the work;

197. 簽署的規定：對法人團體的適用範圍

(1) 在以下條文中，凡規定文書須由某人簽署或須由他人代某人簽署，則就法人團體而言，蓋上其印章亦屬符合該規定——

- 第 90(3)(b) 條 (特許人在依據特許而製作的複製品作公開展覽的情況下體現作者的被識別權利)；
- 第 101(3) 條 (版權的轉讓)；
- 第 102(1) 條 (未來版權的轉讓)；
- 第 103(1) 條 (專用特許的批出)。

(2) 在以下條文中，凡規定文書須由某人簽署，則就法人團體而言，由他人代該法人團體簽署或蓋上該法人團體的印章，亦屬符合該規定——

- 第 90(2)(b) 條 (藉文書體現識別作者的權利)；
- 第 98(2) 條 (放棄精神權利)。

198. 次要定義

在本部中——

“文章” (article) 在提及在期刊中的文章的文意中，包括任何類別的項目；

“司法程序” (judicial proceedings) 包括在任何法院、審裁處或具有權限就影響任何人的法律權利或責任的任何事宜作出裁決的人席前進行的法律程序；

“未經授權” (unauthorized) 就任何就作品而作出的事情而言——

- (a) 指並非由版權擁有人作出或並非在版權擁有人的特許下作出；
- (b) 如該項作品沒有版權存在，指並非由作者作出或並非在作者的特許下作出；或在第 14(1) 條本會適用的情況下，並非由作者的僱主作出，或在作者的僱主的特許下作出；或在該兩種情況的任何一種情況下，並非由合法地藉作者或其僱主而提出申索的人作出或並非在該人的特許下作出；或
- (c) 指並非依據第 57 條 (由政府對某些材料作出複製等) 而作出；

“字體” (typeface) 包括在印刷中使用的裝飾花紋圖案；

“足夠的卸責聲明” (sufficient disclaimer) 就可構成侵犯第 92 條 (反對作品受貶損處理的權利) 所賦予權利的作為而言，指一項清晰和合理地顯著的表示，謂某作品已受到未經其作者或導演同意的處理，而——

- (a) 該項表示是在作出上述作為之時作出的；及
- (b) 如作者或導演當時已被識別，則該項表示是與該識別並排出現的；

“electronic” (電子) means actuated by electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy, and “in electronic form” (電子形式) means in a form usable only by electronic means;

“employed” (受僱), “employee” (僱員), “employer” (僱主) and “employment” (僱用) refer to employment under a contract of service or of apprenticeship;

“export” (輸出) means to take, or cause to be taken, out of Hong Kong any article;

“facsimile copy” (精確複製品) includes a copy which is reduced or enlarged in scale;

“import” (輸入) means to bring, or cause to be brought, into Hong Kong any article;

“international organization” (國際組織) means an organization the members of which include one or more countries, territories or areas;

“judicial proceedings” (司法程序) includes proceedings before any court, tribunal or person having authority to decide any matter affecting a person’s legal rights or liabilities;

“producer” (製作人), in relation to a sound recording or a film, means the person by whom the arrangements necessary for the making of the sound recording or film are undertaken;

“rental right” (租賃權) means the right of a copyright owner to authorize or prohibit the rental of copies of a computer program or sound recording (see section 25);

“reprographic copy” (翻印複製品) refers to a copy made by means of a reprographic process;

“reprographic process” (翻印程序) means a process—

- (a) for making facsimile copies; or
- (b) involving the use of an appliance for making multiple copies,

and includes, in relation to a work held in electronic form, any copying by electronic means, but does not include the making of a sound recording or film;

“sufficient acknowledgement” (足夠的確認聲明) means an acknowledgement identifying the work in question by its title or other description, and identifying the author unless—

- (a) in the case of a published work, it is published anonymously;
- (b) in the case of an unpublished work, it is not possible for a person to ascertain the identity of the author by reasonable inquiry;

“sufficient disclaimer” (足夠的卸責聲明), in relation to an act capable of infringing the right conferred by section 92 (right to object to derogatory treatment of work), means a clear and reasonably prominent indication—

- (a) given at the time of the act; and
- (b) if the author or director is then identified, appearing along with the identification,

“足夠的確認聲明” (sufficient acknowledgement) 指藉有關作品的名稱或其他描述而識別該項作品並除在以下情況外識別其作者的聲明——

- (a) 就已發表作品而言，該項作品是不具名發表的；
- (b) 就未發表作品而言，任何人不能藉合理查究而確定其作者的身分；

“受僱” (employed)、 “僱員” (employee)、 “僱主” (employer) 及 “僱用” (employment) 指僱用合約或學徒訓練合約下的僱用；

“書面” (writing) 包括任何形式的記號或代碼，不論是否手寫的，亦不論其記錄的方法或所記錄於的媒體；而 “寫出” (written) 亦據此解釋；

“租賃權” (rental right) 指版權擁有人授權租賃或禁止租賃電腦程式或聲音紀錄的複製品的權利 (參閱第 25 條)；

“國際組織” (international organization) 指成員包括一個或多於一個國家、地區或地方的組織；

“無線電訊” (wireless telegraphy) 指通過為發送電磁能量而建造或安排並非由任何實體物質所提供的線路而發送電磁能量；

“電子” (electronic) 指藉電能量、磁能量、電磁能量、電化能量或電機能量驅動，而 “電子形式” (in electronic form) 指只可藉電子方法使用的形式；

“電訊系統” (telecommunications system) 指藉電子方法傳送影像、聲音或其他資料的系統；

“業務” (business) 包括行業或專業；

“匯集作品” (collective work) 指——

- (a) 合作作品；或
- (b) 不同作者有明顯各自分開的貢獻的作品，或收納了不同作者的作品或不同作者的作品某些部分的作品；

“電腦產生” (computer-generated) 就作品而言，指該作品是在沒有人類作者的情況下由電腦產生的；

“過境物品” (article in transit) 指以下物品——

- (a) 只為被帶出香港而帶進香港的物品；及
- (b) 在某船隻或航空器之內或之上被帶進香港並在所有時間均留在該船隻或航空器之內或之上的物品；

- that the work has been subjected to treatment to which the author or director has not consented;
- “telecommunications system” (電訊系統) means a system for transmitting visual images, sounds or other information by electronic means;
- “typeface” (字體) includes an ornamental motif used in printing;
- “unauthorized” (未經授權), as regards anything done in relation to a work, means done otherwise than—
- by or with the licence of the copyright owner;
 - if copyright does not subsist in the work, by or with the licence of the author or, in a case where section 14(1) would have applied, the author's employer or, in either case, persons lawfully claiming under him; or
 - in pursuance of section 57 (copying, etc. of certain material by the Government);
- “wireless telegraphy” (無線電訊) means the sending of electro-magnetic energy over paths which are not provided by any material substance constructed or arranged for that purpose;
- “writing” (書面) includes any form of notation or code, whether by hand or otherwise and regardless of the method by which, or medium in or on which, it is recorded, and “written” (寫出) is construed accordingly.
- [cf. 1988 c. 48 s. 178 U.K.]

199. Index of defined expressions

The following Table shows provisions defining or otherwise explaining expressions used in this Part (other than provisions defining or explaining an expression used only in the same section)—

acts restricted by copyright	section 22(1)
adaptation	section 29(3)
archivist (in sections 46 to 53)	section 46(5)
article (in a periodical)	section 198
article in transit	section 198
artistic work	section 5
author	sections 11 and 12(4)
authorized officer	section 198
broadcast (and related expressions)	section 8
building	section 5
business	section 198
cable programme, cable programme service (and related expressions)	section 9

- “製作人” (producer) 就聲音紀錄或影片而言，指從事進行製作聲音紀錄或影片所需安排的人；
- “精確複製品” (facsimile copy) 包括比例上經縮小或放大的複製品；
- “輸入” (import) 指將任何物品帶進香港或致使任何物品被帶進香港；
- “輸出” (export) 指將任何物品帶出香港或致使任何物品被帶出香港；
- “獲授權人員” (authorized officer) 指獲總監以書面授權行使本條例賦予獲授權人員的任何權力和執行本條例委予獲授權人員的任何職責的任何公職人員；
- “總監” (Commissioner) 指香港海關總監及香港海關副總監或助理總監；
- “翻印程序” (reprographic process) 指——
- 製作精確複製品的程序；或
 - 涉及使用製作大量複製品的裝置的程序，
- 而就藉電子形式保存的作品而言，包括藉電子方法進行的任何複製，但不包括影片或聲音紀錄的製作；
- “翻印複製品” (reprographic copy) 指藉翻印程序製作的複製品。

[比照 1988 c. 48 s. 178 U.K.]

199. 界定詞句的索引

下表顯示界定或以其他方式解釋在本部中使用的詞句的條文(但就只在同一條中使用的詞句作出界定或解釋的條文則除外)——

已發表版本(在提及排印編排的版權的文意中)	第 10 條
文章(在期刊中的)	第 198 條
不為人知(就作品的作者而言)	第 11(5) 條
文學作品	第 4(1) 條
立法局版權	第 184(2) 及 185(5) 條
未來版權	第 102(2) 條
司法程序	第 198 條
生效(在附表 2 中)	該附表第 1(2) 段
平面美術作品	第 5 條
代(就教育機構而言)	第 195(3) 條
未經授權(關於就任何作品而作出的事情)	第 198 條
向公眾提供複製品	第 26 條

collective work	section 198	向公眾發放複製品	第 24 條
commencement (in Schedule 2)	paragraph 1(2) of that Schedule	合作作品	第 12 條
commercial publication	section 196	多於一名作者的作品 (在第 VIII 分部中)	第 145(3) 條
Commissioner	section 198	扣留令	第 135 條
computer-generated	section 198	有線傳播節目、有線傳播 節目服務 (及相關詞句)	第 9 條
copy and copying	section 23	字體	第 198 條
copyright (generally)	section 2	作者	第 11 及 12(4) 條
copyright (in Schedule 2)	paragraph 2(2) of that Schedule	作者不為人知 (的作品)	第 11(4) 條
copyright owner	sections 112(2) and 194	作品 (在附表 2 中)	該附表第 2(1) 段
Copyright Tribunal	section 169	改編本	第 29(3) 條
copyright work	section 2(2)	足夠的卸責聲明	第 198 條
detention order	section 135	足夠的確認聲明	第 198 條
dramatic work	section 4(1)	政府版權	第 182(2) 及 183(3) 條
educational establishment	section 195(1)	受版權所限制的作為	第 22(1) 條
electronic and electronic form	section 198	表演	第 27(2) 條
employed, employee, employer and employment	section 198	受僱、僱員、僱主及僱用	第 198 條
exclusive licence	section 103(1)	版權作品	第 2(2) 條
export	section 198	版權 (在附表 2 中)	該附表第 2(2) 段
facsimile copy	section 198	版權 (概括而言)	第 2 條
film	section 7	版權審裁處	第 169 條
future copyright	section 102(2)	版權擁有人	第 112(2) 及 194 條
Government copyright	sections 182(2) and 183(3)	版權擁有人的特許	第 101(4)、102(3) 及 194 條
graphic work	section 5	侵犯版權複製品	第 35 條
import	section 198	指明的圖書館或檔案室 (在第 47 至 53 條中)	第 46(2)(b) 條
infringing copy	section 35	訂明條件 (在第 47 至 53 條中)	第 46(2)(a) 條
international organization	section 198	音樂作品	第 4(1) 條
issue of copies to the public	section 24	建築物	第 5 條
joint authorship (work of)	section 12	教育機構	第 195(1) 條
judicial proceedings	section 198	書面及寫出	第 198 條
Legislative Council copyright	sections 184(2) and 185(5)	特許計劃 (在第 155 至 160 條中)	第 154 條
librarian (in sections 45 to 52)	section 46(5)	特許計劃 (概括而言)	第 145(1) 條
licence (in sections 158 to 162)	section 161	特許 (在第 162 至 166 條中)	第 161 條
licence of copyright owner	sections 101(4), 102(3) and 194		
licensing body (in Division VIII)	section 145(2)		
licensing scheme (generally)	section 145(1)		

licensing scheme (in sections 151 to 156)	section 154	特許機構 (在第 VIII 分部中)	第 145(2) 條
literary work	section 4(1)	教師	第 195(2) 條
made (in relation to a literary, dramatic or musical work)	section 4(2)	租賃權	第 198 條
make available copies to the public	section 26	專用特許	第 103(1) 條
musical work	section 4(1)	商業發表	第 196 條
on behalf of (in relation to an educational establishment)	section 195(3)	國際組織	第 198 條
performance	section 27(2)	發表及相關詞句	第 196 條
photograph	section 5	無線電訊	第 198 條
prescribed conditions (in sections 46 to 52)	section 46(2)(a)	電子及電子形式	第 198 條
producer (in relation to a sound recording or film)	section 198	照片	第 5 條
programme (in the context of broadcasting)	section 8(3)	業務	第 198 條
prospective owner (of copyright)	section 102(2)	電訊系統	第 198 條
publication and related expressions	section 196	匯集作品	第 198 條
published edition (in the context of copyright in the typographical arrangement)	section 10	電腦產生	第 198 條
pupil	section 195(2)	過境物品	第 198 條
rental right	section 198	準擁有人 (版權的準擁有人)	第 102(2) 條
reprographic copies and reprographic copying	section 198	製作人 (就聲音紀錄或影片而言)	第 198 條
reprographic process	section 198	製作 (就文學作品、戲劇作品或音樂作品而言)	第 4(2) 條
right holder	section 135	圖書館館長 (在第 46 至 53 條中)	第 46(5) 條
sculpture	section 5	複製品及複製	第 23 條
signed	section 197	精確複製品	第 198 條
sound recording	section 6	影片	第 7 條
specified library or archive (in sections 46 to 52)	section 46(2)(b)	節目 (在提及廣播的文意中)	第 8(3) 條
sufficient acknowledgement	section 198	廣播 (及相關詞句)	第 8 條
sufficient disclaimer	section 198	輸入	第 198 條
teacher	section 195(2)	輸出	第 198 條
telecommunications system	section 198	學生	第 195(2) 條
typeface	section 198	雕塑品	第 5 條
		聲音紀錄	第 6 條
		檔案室負責人 (在第 46 至 53 條中)	第 46(5) 條
		獲授權人員	第 198 條
		總監	第 198 條
		戲劇作品	第 4(1) 條

unauthorized (as regards things done in relation to a work)	section 198
unknown (in relation to the author of a work)	section 11(5)
unknown authorship (work of)	section 11(4)
wireless telegraphy work (in Schedule 2)	section 198
work of more than one author (in Division VIII)	paragraph 2(1) of that Schedule
writing and written	section 145(3)
	section 198
	[<i>cf.</i> 1988 c. 48 s. 179 U.K.]

翻印程序	第 198 條
翻印複製品及翻印複製	第 198 條
藝術作品	第 5 條
簽署	第 197 條
權利持有人	第 135 條

[*比照 1988 c. 48 s. 179 U.K.*]

PART III

RIGHTS IN PERFORMANCES

DIVISION I

THE RIGHTS, INFRINGEMENT OF THE RIGHTS AND
REMEDIES FOR INFRINGEMENT

Introductory

200. Rights conferred on performers and
persons having fixation rights

(1) This Part confers rights—

- (a) on a performer, by requiring his consent to the exploitation of his performances and thus enabling him to prohibit such exploitation without his consent (see sections 201 to 207); and
- (b) on a person having fixation rights in relation to a performance, in relation to fixations made without his consent or that of the performer (see sections 208 to 211).

(2) In this Part—

“fixation” (錄製品、錄製), in relation to a performance, means a film or sound recording—

- (a) made directly from the unfixed performance;
- (b) made from a broadcast of, or cable programme including, the performance; or
- (c) made, directly or indirectly, from another fixation of the performance;

“performance” (表演) means—

第 III 部

在表演中的權利

第 I 分部

權利、侵犯權利及侵犯權利的補救

引言

200. 賦予表演者和具有錄製權的人的權利

(1) 本部——

- (a) 藉規定對任何表演的利用均須其表演者的同意，以賦權予有關表演者，使他可禁止未獲他的同意而作出該利用 (參閱第 201 至 207 條)；及
- (b) 就未獲得對某項表演具有錄製權的人的同意或表演者的同意而製作的錄製品而賦權予對該項表演具有錄製權的人 (參閱第 208 至 211 條)。

(2) 在本部中——

“表演” (performance) 指——

- (a) 戲劇表演 (包括舞蹈及默劇)；
- (b) 音樂表演；
- (c) 誦讀或背誦文學作品；
- (d) 綜合表演或任何相類的演出，

但該項表演須屬一項由一名或多於一名個人作出的非錄製表演；

“表演者” (performer) 指演員、歌手、樂師、舞蹈者或任何其他從事演戲、唱歌、演說、誦讀、演出、演繹或以其他方式作出表演的人；

“錄製品”、“錄製” (fixation) 就一項表演而言，指——

- (a) a dramatic performance (which includes dance and mime);
 - (b) a musical performance;
 - (c) a reading or recitation of a literary work;
 - (d) a performance of a variety act or any similar presentation,
- which is, or so far as it is, an unfixed performance given by one or more individuals;

“performer” (表演者) means an actor, singer, musician, dancer or any other person who acts, sings, delivers, declaims, plays in, interprets, or otherwise performs a performance.

- (3) The rights conferred by this Part are independent of—
- (a) any copyright in, or moral rights relating to, any work performed or any film or sound recording of, or broadcast or cable programme including, the performance; and
 - (b) any other right or obligation arising otherwise than under this Part.

[*cf.* 1988 c. 48 s. 180 U.K.]

Performers' rights

201. Qualifying performances

A performance is a qualifying performance for the purposes of the provisions of this Part relating to performers' rights if it is given in Hong Kong or elsewhere by an individual domiciled or resident or having a right of abode in Hong Kong or elsewhere.

[*cf.* 1988 c. 48 s. 181 U.K.]

202. Consent required for fixation, etc. of unfixed performance

(1) A performer's rights are infringed by a person who, without the performer's consent—

- (a) makes a fixation of the whole or any substantial part of a qualifying performance directly from the unfixed performance;
- (b) broadcasts live, or includes live in a cable programme service, or makes available to the public live, the whole or any substantial part of a qualifying performance; or
- (c) makes a fixation of the whole or any substantial part of a qualifying performance directly from a broadcast of, or cable programme including, the unfixed performance or directly from the unfixed performance which is made available to the public live.

- (a) 自某項非錄製表演直接製作的影片或聲音紀錄；
- (b) 自該項表演的廣播製作的影片或聲音紀錄，或自包括該項表演的有線傳播節目製作的影片或聲音紀錄；或
- (c) 自該項表演的另一錄製品直接或間接製作的影片或聲音紀錄。

(3) 本部賦予的權利獨立於以下項目——

- (a) 任何已表演的作品的版權或關乎該作品的精神權利；或該表演的任何影片或聲音紀錄的版權或關乎該影片或聲音紀錄的精神權利；或包括該表演的廣播或有線傳播節目的版權或關乎該廣播或有線傳播節目的精神權利；及
- (b) 並非根據本部而產生的任何其他權利或責任。

[*比照* 1988 c. 48 s. 180 U.K.]

表演者的權利

201. 合資格表演

就本部關乎表演者的權利的條文而言，如某項表演是由以香港或其他地方為居籍或居於香港或其他地方或有香港或其他地方居留權的個人在香港或其他地方作出的，則該項表演屬合資格表演。

[*比照* 1988 c. 48 s. 181 U.K.]

202. 進行非錄製表演的錄製等須獲得同意

(1) 任何人在未獲得某合資格表演的表演者的同意下，作出以下作為，即屬侵犯該表演者的權利——

- (a) 直接自非錄製表演錄製該合資格表演的整項或其任何實質部分；
- (b) 將該合資格表演的整項或其任何實質部分即場廣播，或將該合資格表演的整項或其任何實質部分即場包括在任何有線傳播節目服務內或即場向公眾提供；或
- (c) 直接自非錄製表演的廣播或包括非錄製表演的有線傳播節目錄製該合資格表演的整項或其任何實質部分，或直接自即場向公眾提供的非錄製表演錄製該合資格表演的整項或其任何實質部分。

(2) A performer's rights are not infringed by the making of any such fixation by a person for his private and domestic use.

(3) In an action for infringement of a performer's rights brought by virtue of this section damages shall not be awarded against a defendant who shows that at the time of the infringement he believed on reasonable grounds that consent had been given.

(4) In this section "makes available to the public live" (即場向公眾提供), in relation to a performance, means the making available of the unfixed performance, by wire or wireless means, in such a way that members of the public in Hong Kong or elsewhere may access the performance from a place individually chosen by them.

[*cf.* 1988 c. 48 s. 182 U.K.]

203. Consent required for copying of fixation

(1) A performer's rights are infringed by a person who, without the performer's consent, makes, otherwise than for his private and domestic use, a copy of a fixation of the whole or any substantial part of a qualifying performance; and references in this Part to copying and copies are construed as follows.

(2) It is immaterial whether the copy is made directly or indirectly.

(3) Making of a copy of a fixation means reproducing the fixation in any material form. This includes storing the fixation in any medium by electronic means.

(4) The right of a performer under this section to authorize or prohibit the making of such copies is referred to in this Part as "the right of reproduction".

[*cf.* 1988 c. 48 s. 182A U.K.]

204. Consent required for issue of copies to public

(1) A performer's rights are infringed by a person who, without the performer's consent, issues to the public copies of a fixation of the whole or any substantial part of a qualifying performance.

(2) References in this Part to the issue to the public of copies of a fixation are to the act of putting into circulation copies not previously put into circulation, in Hong Kong or elsewhere, by or with the consent of the performer.

(3) References in this Part to the issue to the public of copies of a fixation do not include—

- (a) any subsequent distribution, sale, hiring or loan of copies previously put into circulation; or
- (b) any subsequent importation of such copies into Hong Kong.

(2) 任何人製作該等錄製品供他作私人和家居使用，不屬侵犯表演者的權利。

(3) 在憑藉本條提起的任何侵犯表演者的權利的訴訟中，如被告人證明在侵犯權利時，他有合理理由相信已獲得同意，則不得針對該被告人而判給損害賠償。

(4) 在本條中，就一項表演而言，“即場向公眾提供”(makes available to the public live)指藉有線或無線的方式提供非錄製表演，而提供的方法使在香港或其他地方的公眾人士可從其各自選擇的地點觀看或收聽該表演。

[*比照* 1988 c. 48 s. 182 U.K.]

203. 複製錄製品須獲得同意

(1) 任何人在未獲得某合資格表演的表演者的同意下，就該合資格表演的整項或其任何實質部分的錄製品製作複製品而非供他私人和家居使用，即屬侵犯該表演者的權利；而在本部中，凡提述複製及複製品，須按以下條文解釋。

(2) 該複製品是直接或是間接製作的，並不具關鍵性。

(3) 製作錄製品的複製品，指以任何實質形式複製該錄製品，包括藉電子方法將錄製品貯存於任何媒體。

(4) 表演者根據本條授權製作或禁止製作該等複製品的權利，在本部中稱為“複製權”。

[*比照* 1988 c. 48 s. 182A U.K.]

204. 向公眾發放複製品須獲得同意

(1) 任何人在未獲某合資格表演的表演者的同意下，向公眾發放該合資格表演的整項或其任何實質部分的錄製品的複製品，即屬侵犯該表演者的權利。

(2) 在本部中，凡提述向公眾發放錄製品的複製品，即提述由表演者或在表演者的同意下將以前未曾在香港或其他地方發行的複製品發行的作為。

(3) 在本部中，凡提述向公眾發放錄製品的複製品，並不包括——

- (a) 以前曾發行的複製品的任何其後的發售、售賣、租賃或借出；或
- (b) 該等複製品其後輸入香港。

(4) References in this Part to the issue of copies of a fixation of a performance include the issue of the original fixation of the unfixed performance.

(5) The right of a performer under this section to authorize or prohibit the issue of copies to the public is referred to in this Part as “the right of distribution”.

[*cf.* 1988 c. 48 s. 182B U.K.]

205. Consent required for making available of copies to public

(1) A performer's rights are infringed by a person who, without the performer's consent, makes available to the public copies of a fixation of the whole or any substantial part of a qualifying performance.

(2) References in this Part to the making available to the public of copies of a fixation of a performance are to the making available of copies of the fixation, by wire or wireless means, in such a way that members of the public in Hong Kong or elsewhere may access the fixation from a place and at a time individually chosen by them (such as the making available of copies of works through the service commonly known as the INTERNET).

(3) References in this Part to the making available of copies of a fixation of a performance include the making available of the original fixation of the unfixed performance.

(4) The mere provision of physical facilities for enabling the making available to the public of copies of a fixation of a performance does not of itself constitute an act of making available to the public of copies of the fixations.

(5) The right of a performer under this section to authorize or prohibit the making available of copies of a fixation to the public is referred to in this Part as “the right of making available to the public”.

206. Infringement of performer's rights by use of fixation made without consent

(1) A performer's rights are infringed by a person who, without the performer's consent—

(a) shows or plays in public the whole or any substantial part of a qualifying performance; or

(b) broadcasts or includes in a cable programme service the whole or any substantial part of a qualifying performance,

by means of a fixation which was, and which that person knows or has reason to believe was, made without the performer's consent.

(4) 在本部中，凡提述發放一項表演的錄製品的複製品，包括發放非錄製表演的原本錄製品。

(5) 表演者根據本條授權向公眾發放或禁止向公眾發放複製品的權利，在本部中稱為“分發權利”。

[*比照* 1988 c. 48 s. 182B U.K.]

205. 向公眾提供複製品須獲得同意

(1) 任何人在未獲某合資格表演的表演者的同意下，向公眾提供該合資格表演的整項或其任何實質部分的錄製品的複製品，即屬侵犯該表演者的權利。

(2) 在本部中，凡提述向公眾提供一項表演的錄製品的複製品，即提述藉有線或無線的方式提供該錄製品的複製品，而如此提供的方法使在香港或其他地方的公眾人士可從其各自選擇的地點及於其各自選擇的時間觀看或收聽該錄製品（例如透過一般稱為電腦互聯網服務的服務而提供作品的複製品）。

(3) 在本部中，凡提述提供一項表演的錄製品的複製品，包括提供非錄製表演的原本錄製品。

(4) 僅提供使一項表演的錄製品的複製品能夠向公眾提供的實物設施本身並不構成向公眾提供錄製品的複製品的作為。

(5) 表演者根據本條授權向公眾提供或禁止向公眾提供錄製品的複製品的權利，在本部中稱為“向公眾提供的權利”。

206. 藉使用在未獲同意下製作的錄製品而侵犯表演者的權利

(1) 任何人在未獲得某合資格表演的表演者的同意下，藉任何錄製品——

(a) 將該合資格表演的整項或其任何實質部分公開放映或播放；或

(b) 將該合資格表演的整項或其任何實質部分廣播，或將合資格表演的整項或其任何實質部分包括在任何有線傳播節目服務內，

而該錄製品是在沒有獲得該表演者的同意下製作的，且該人知道或有理由相信該錄製品是在沒有獲得該表演者的同意下製作的，則該人即屬侵犯該表演者的權利。

(2) A performer's rights are also infringed by a person who, without the performer's consent, shows or plays the whole or any substantial part of a qualifying performance in the course of making available to the public a fixation which was, and which that person knows or has reason to believe was, made without the performer's consent.

[*cf.* 1988 c. 48 s. 183 U.K.]

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

(1) A performer's rights are infringed by a person who, without the performer's consent—

- (a) imports into Hong Kong or exports from Hong Kong, otherwise than for his private and domestic use; or
- (b) for the purpose of trade or business possesses, makes available to the public, sells or lets for hire, offers or exposes for sale or hire, or distributes,

a fixation of a qualifying performance which is, and which that person knows or has reason to believe is, an infringing fixation.

(2) Where in an action for infringement of a performer's rights brought by virtue of this section a defendant shows that the infringing fixation was innocently acquired by him or a predecessor in title of his, the only remedy available against him in respect of the infringement is damages not exceeding a reasonable payment in respect of the act complained of.

(3) In subsection (2) "innocently acquired" (不知情地取得) means that the person acquiring the fixation did not know and had no reason to believe that it was an infringing fixation.

[*cf.* 1988 c. 48 s. 184 U.K.]

Rights of person having fixation rights

208. Exclusive fixation contracts and persons having fixation rights

(1) In this Part an "exclusive fixation contract" (獨有錄製合約) means a contract between a performer and another person under which that person is entitled to the exclusion of all other persons (including the performer) to make fixations of one or more of the performer's performances with a view to their commercial exploitation.

(2) 任何人在未獲得某合資格表演的表演者的同意下，在向公眾提供錄製品的過程中將該合資格表演的整項或其任何實質部分放映或播放，而該錄製品是在沒有獲得該表演者的同意下製作的，且該人亦知道或有理由相信該錄製品是在沒有獲得該表演者的同意下製作的，則該人亦屬侵犯該表演者的權利。

[*比照* 1988 c. 48 s. 183 U.K.]

207. 藉輸入、輸出或管有侵犯權利的錄製品或進行侵犯權利的錄製品交易而侵犯表演者的權利

(1) 任何人在未獲得某合資格表演的表演者的同意下，將該合資格表演的錄製品——

- (a) 輸入香港或輸出香港而非供他私人和家居使用；或
- (b) 為交易或業務的目的而管有、向公眾提供、出售或出租、要約出售或要約出租、為出售或出租而展示，或分發，

而該錄製品是侵犯權利的錄製品，且該人亦知道或有理由相信該錄製品是侵犯權利的錄製品，則該人即屬侵犯該表演者的權利。

(2) 在憑藉本條提起的侵犯表演者的權利的訴訟中，如被告人證明該侵犯權利的錄製品是由他或他之前的所有權持有人不知情地取得的，則就該項侵犯權利而針對他的唯一補救，是一筆不超過就該項遭受申訴的作為而合理償付的損害賠償。

(3) 在第(2)款中，“不知情地取得”(innocently acquired)指取得錄製品的人不知道亦無理由相信該錄製品是侵犯權利的錄製品。

[*比照* 1988 c. 48 s. 184 U.K.]

具有錄製權的人的權利

208. 獨有錄製合約和具有錄製權的人

(1) 在本部中，“獨有錄製合約”(exclusive fixation contract)指表演者與另一人之間的合約，而根據此合約，該另一人有權製作該表演者的一項或多於一項表演的錄製品，以期將該等錄製品作商業利用，並摒除所有其他人(包括該表演者)具有該項權利。

(2) References in this Part to a “person having fixation rights”, in relation to a performance, are (subject to subsection (3)) to a person—

(a) who is a party to and has the benefit of an exclusive fixation contract to which the performance is subject; or

(b) to whom the benefit of such a contract has been assigned, and who is a qualifying person.

(3) If a performance is subject to an exclusive fixation contract but the person mentioned in subsection (2) is not a qualifying person, references in this Part to a “person having fixation rights” in relation to the performance are to any person—

(a) who is licensed by such a person to make fixations of the performance with a view to their commercial exploitation; or

(b) to whom the benefit of such a licence has been assigned, and who is a qualifying person.

(4) In this section “with a view to commercial exploitation” (以期作商業利用) means with a view to the fixations being sold or let for hire, or shown or played in public, or issued or made available to the public.

[*cf. 1988 c. 48 s. 185 U.K.*]

209. Consent required for fixation of performance subject to exclusive contract

(1) A person infringes the rights of a person having fixation rights in relation to a performance who, without the latter’s consent or that of the performer, makes a fixation of the whole or any substantial part of the performance, otherwise than for his private and domestic use.

(2) In an action for infringement of those rights brought by virtue of this section damages shall not be awarded against a defendant who shows that at the time of the infringement he believed on reasonable grounds that consent had been given.

[*cf. 1988 c. 48 s. 186 U.K.*]

210. Infringement of fixation rights by use of fixation made without consent

(1) A person infringes the rights of a person having fixation rights in relation to a performance who, without the latter’s consent or, in the case of a qualifying performance, that of the performer—

(a) shows or plays in public the whole or any substantial part of the performance; or

(2) 在本部中，就某項表演而言，凡提述“具有錄製權的人”，(除第(3)款另有規定外)即提述——

(a) 身為規限該項表演的獨有錄製合約的立約一方並享有該合約的利益的人；或

(b) 上述合約的利益所轉讓予的人，該人並須為合資格的人。

(3) 如某項表演受一項獨有錄製合約所規限，但第(2)款提及的人卻並非合資格的人，則在本部中，就該項表演而言，凡提述“具有錄製權的人”，即提述——

(a) 任何獲該等並非合資格的人的特許而製作該項表演的錄製品以期將該等錄製品作商業利用的人；或

(b) 上述特許的利益所轉讓予的人，該人並須為合資格的人。

(4) 在本條中，“以期作商業利用”(with a view to commercial exploitation)指以期將錄製品出售或出租，或公開放映或播放，或向公眾發放或提供。

[*比照 1988 c. 48 s. 185 U.K.*]

209. 製作受獨有合約規限的表演的錄製品須獲得同意

(1) 任何人在未獲得對某項表演具有錄製權的人的同意或該表演的表演者的同意下，製作該表演的整項或其任何實質部分的錄製品而非供他私人和家居使用，即屬侵犯對該項表演具有錄製權的人的權利。

(2) 在憑藉本條提起的任何侵犯該等權利的訴訟中，如被告人證明在侵犯權利時，他有合理理由相信已獲得同意，則不得針對該被告人而判給損害賠償。

[*比照 1988 c. 48 s. 186 U.K.*]

210. 藉使用在未獲同意下製作的錄製品而侵犯錄製權

(1) 任何人在未獲得對某項表演具有錄製權的人的同意下，或(如該表演屬合資格表演)該表演的表演者的同意下，藉任何錄製品——

(a) 公開放映或播放該表演的整項或其任何實質部分；或

(b) broadcasts or includes in a cable programme service the whole or any substantial part of the performance, by means of a fixation which was, and which that person knows or has reason to believe was, made without the appropriate consent.

(2) A person infringes the rights of a person having fixation rights in relation to a performance who, without the latter's consent or, in the case of a qualifying performance, that of the performer, shows or plays the whole or any substantial part of the performance in the course of making available to the public a fixation which was, and which that person knows or has reason to believe was, made without the appropriate consent.

(3) The reference in subsection (1) or (2) to "the appropriate consent" is to the consent of—

- (a) the performer; or
- (b) the person who at the time the consent was given had fixation rights in relation to the performance (or, if there was more than one such person, of all of them).

[cf. 1988 c. 48 s. 187 U.K.]

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

(1) A person infringes the rights of a person having fixation rights in relation to a performance who, without the latter's consent or, in the case of a qualifying performance, that of the performer—

- (a) imports into Hong Kong or exports from Hong Kong, otherwise than for his private and domestic use; or
- (b) for the purpose of trade or business possesses, makes available to the public, sells or lets for hire, offers or exposes for sale or hire, or distributes,

a fixation of the performance which is, and which that person knows or has reason to believe is, an infringing fixation.

(2) Where in an action for infringement of those rights brought by virtue of this section a defendant shows that the infringing fixation was innocently acquired by him or a predecessor in title of his, the only remedy available against him in respect of the infringement is damages not exceeding a reasonable payment in respect of the act complained of.

(3) In subsection (2) "innocently acquired" (不知情地取得) means that the person acquiring the fixation did not know and had no reason to believe that it was an infringing fixation.

[cf. 1988 c. 48 s. 188 U.K.]

(b) 將該表演的整項或其任何實質部分廣播或將該表演的整項或其任何實質部分包括在任何有線傳播節目服務內，而該錄製品是在沒有獲得適當的同意下製作的，且該人亦知道或有理由相信該錄製品是在沒有獲得適當的同意下製作的，則該人即屬侵犯對該項表演具有錄製權的人的權利。

(2) 任何人在未獲得對某項表演具有錄製權的人的同意下，或(如該表演屬合資格表演)該表演的表演者的同意下，在向公眾提供錄製品的過程中將該表演的整項或其任何實質部分放映或播放，而該錄製品是在沒有獲得適當的同意下製作的，且該人知道或有理由相信該錄製品是在沒有獲得適當的同意下製作的，則該人即屬侵犯對該表演具有錄製權的人的權利。

(3) 在第(1)或(2)款中，凡提述“適當的同意”，即提述以下的人的同意——

- (a) 表演者；或
- (b) 在給予同意時，對表演具有錄製權的人(如對表演具有錄製權的人多於一人，則指所有該等人)。

[比照 1988 c. 48 s. 187 U.K.]

211. 藉輸入、輸出或管有侵犯權利的錄製品或進行侵犯權利的錄製品交易而侵犯錄製權

(1) 任何人在未獲得對某項表演具有錄製權的人的同意或(如該表演屬合資格表演)該表演的表演者的同意下，將該項表演的錄製品——

- (a) 輸入香港或輸出香港而非供他私人和家居使用；或
- (b) 為交易或業務的目的而管有、向公眾提供、出售或出租、要約出售或要約出租、為出售或出租而展示，或分發，

而該錄製品是侵犯權利的錄製品，且該人知道或有理由相信該錄製品是侵犯權利的錄製品，則該人即屬侵犯對該項表演具有錄製權的人的權利。

(2) 在憑藉本條提起的侵犯該等權利的訴訟中，如被告人證明該侵犯權利的錄製品是由他或他之前的所有權持有人不知情地取得的，則就該項侵犯權利而針對他判給的唯一補救，是判給一筆不超過就該項遭受申訴的作為而合理償付的損害賠償。

(3) 在第(2)款中，“不知情地取得”(innocently acquired)指取得錄製品的人不知道亦無理由相信該錄製品是侵犯權利的錄製品。

[比照 1988 c. 48 s. 188 U.K.]

Exceptions to rights conferred

212. Acts permitted notwithstanding rights conferred by this Division

The provisions of Division II specify acts which may be done notwithstanding the rights conferred by this Part, being acts which correspond broadly to certain of those specified in Division III of Part II (acts permitted notwithstanding copyright).

[*cf.* 1988 c. 48 s. 189 U.K.]

213. Power of Tribunal to give consent on behalf of owner of right of reproduction in certain cases

(1) The Copyright Tribunal may, on the application of a person wishing to make a copy of a fixation of a performance, give consent in a case where the identity or whereabouts of the person entitled to the right of reproduction cannot be ascertained by reasonable inquiry.

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

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

(4) In any case the Tribunal shall take into account the following factors—

- (a) whether the original fixation was made with the performer's consent and is lawfully in the possession or control of the person proposing to make the further fixation;
- (b) whether the making of the further fixation is consistent with the obligations of the parties to the arrangements under which, or is otherwise consistent with the purposes for which, the original fixation was made.

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

[*cf.* 1988 c. 48 s. 190 U.K.]

賦予權利的例外情況

212. 在儘管有本分部賦予的權利的情況下仍允許的作為

第 II 分部的條文指明在儘管有本部賦予的權利的情況下仍可作出的作為，而該等作為大致上與第 II 部第 III 分部 (在儘管有版權的情況下仍允許的作為) 中所指明的某些作為相對應。

[*比照* 1988 c. 48 s. 189 U.K.]

213. 審裁處在某些情況下代複製權的擁有人給予同意的權力

(1) 任何人如意欲製作某項表演的錄製品的複製品，在藉合理查究亦不能確定具有複製權的人的身分或下落的情況下，版權審裁處可應該人的申請而給予同意。

(2) 審裁處所給予的同意，就本部中關乎表演者的權利的條文而言，具有由具有複製權的人所給予的同意的效力，而該項由審裁處所給予的同意亦可在審裁處在其命令上指明的任何條件的規限下而給予。

(3) 除非根據第 174 條訂立的規則 (一般程序規則) 所規定的通知書已予送達或審裁處在任何個別情況下指示的通知書已予送達，否則審裁處不得根據第 (1) 款給予同意。

(4) 在任何情況下，審裁處均須考慮以下因素——

- (a) 原本錄製品是否在表演者的同意下製作，並且由打算製作進一步錄製品的人合法地管有或控制；
- (b) 凡原本錄製品是根據某些安排而製作的，則進一步錄製品的製作是否與該等安排的各方當事人的責任相符，又或是否與製作原本錄製品的目的相符。

(5) 凡審裁處根據本條給予同意，而申請人與具有複製權的人之間並無協議，則審裁處可就付款予該具有複製權的人作為給予同意的代價一事作出審裁處認為合適的命令。

[*比照* 1988 c. 48 s. 190 U.K.]

Duration of rights**214. Duration of rights**

(1) The following provisions have effect with respect to the duration of the rights conferred by this Part.

(2) The rights conferred by this Part in relation to a performance expire—

(a) at the end of the period of 50 years from the end of the calendar year in which the performance takes place; or

(b) if during that period a fixation of the performance is released, 50 years from the end of the calendar year in which it is released, subject as follows.

(3) For the purposes of subsection (2) a fixation is “released” when it is first published, played or shown in public, broadcast, included in a cable programme service or made available to the public; but in determining whether a fixation has been released no account shall be taken of any unauthorized act.

[*cf. 1988 c. 48 s. 191 U.K.*]

Performers' economic rights**215. Performers' economic rights**

(1) The following rights conferred by this Part on a performer—
the right of reproduction (section 203);
the right of distribution (section 204);
the right of making available to the public (section 205),
are property rights (“a performer’s economic rights”).

(2) References in this Part to the consent of the performer are to be construed in relation to a performer’s economic rights as references to the consent of the rights owner.

(3) Where different persons are (whether in consequence of a partial assignment or otherwise) entitled to different aspects of a performer’s economic rights in relation to a performance, the rights owner for any purpose of this Part is the person who is entitled to the aspect of those rights relevant for that purpose.

(4) Where a performer’s economic rights (or any aspect of them) is owned by more than one person jointly, references in this Part to the rights owner are to all the owners, so that, in particular, any requirement of the licence of the rights owner requires the licence of all of them.

[*cf. 1988 c. 48 s. 191A U.K.*]

權利的期限**214. 權利的期限**

(1) 以下條文就本部賦予的權利的期限具有效力。

(2) 本部就某項表演而賦予的權利於下述期間完結時屆滿——

(a) 如該項表演於某公曆年作出，則該權利在自該年年終起計的 50 年期間完結時屆滿；或

(b) 如該項表演的錄製品於該段期間中另一公曆年發行，則該權利在自該年年終起計的 50 年期間完結時屆滿，

但須受以下條文規限。

(3) 就第 (2) 款而言，錄製品當首次發表、公開播放、放映、廣播、包括在有線傳播節目服務內或向公眾提供時，即屬“發行”，但在決定該錄製品是否屬已發行時，不得考慮任何未經授權的作為。

[*比照 1988 c. 48 s. 191 U.K.*]

表演者的經濟權利**215. 表演者的經濟權利**

(1) 本部賦予表演者的以下權利是產權 (“表演者的經濟權利”)——
分發權 (第 204 條)；
向公眾提供的權利 (第 205 條)；
複製權 (第 203 條)。

(2) 在本部中，凡提述表演者的同意，須就表演者的經濟權利而解釋為提述權利擁有人的同意。

(3) 凡不同的人就一項表演享有不同方面的表演者的經濟權利 (不論是由於局部轉讓或其他原因)，則就本部某目的而言的權利擁有人即為有權享有與該目的有關的方面的權利的人。

(4) 凡表演者的經濟權利 (或其任何方面) 是由多於一人共同擁有的，則在本部中凡提述權利擁有人，即指所有該等擁有人；故此特別是在須要取得權利擁有人特許的情況下，須要取得所有該等擁有人的特許。

[*比照 1988 c. 48 s. 191A U.K.*]

216. Assignment and licences

(1) A performer's economic rights are transmissible by assignment, by testamentary disposition or by operation of law, as personal or moveable property.

(2) An assignment or other transmission of a performer's economic rights may be partial, that is, limited so as to apply—

(a) to one or more, but not all, of the things requiring the consent of the rights owner;

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

(3) An assignment of a performer's economic rights is not effective unless it is in writing signed by or on behalf of the assignor.

(4) A licence granted by the owner of a performer's economic rights is binding on every successor in title to his interest in the rights, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser; and references in this Part to doing anything with, or without, the licence of the rights owner are to be construed accordingly.

[*cf.* 1988 c. 48 s. 191B U.K.]

217. Prospective ownership of a performer's economic rights

(1) This section applies where by an agreement made in relation to a future fixation of a performance, and signed by or on behalf of the performer, the performer purports to assign his performer's economic rights (wholly or partially) to another person.

(2) If on the rights coming into existence the assignee or another person claiming under him would be entitled as against all other persons to require the rights to be vested in him, they shall vest in the assignee or his successor in title by virtue of this subsection.

(3) A licence granted by a prospective owner of a performer's economic rights is binding on every successor in title to his interest (or prospective interest) in the rights, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser.

References in this Part to doing anything with, or without, the licence of the rights owner are to be construed accordingly.

(4) In subsection (3) "prospective owner" (準擁有人), in relation to a performer's economic rights, means a person who is prospectively entitled to those rights, by virtue of such an agreement as is mentioned in subsection (1).

[*cf.* 1988 c. 48 s. 191C U.K.]

216. 轉讓及特許

(1) 表演者的經濟權利可作為非土地財產或動產，藉轉讓、遺囑性質的處置或法律的施行而轉傳。

(2) 表演者的經濟權利的轉讓或其他方式的轉傳可以是局部的，即只局限適用於——

(a) 需要權利擁有人的同意的一項或多於一項的事情，但並非需要權利擁有人的同意的全部事情；

(b) 該等權利存在的期間的部分，而非該期間的整段。

(3) 表演者的經濟權利的轉讓必須採用書面形式，由轉讓人簽署或由他人代其簽署，否則無效。

(4) 由表演者的經濟權利的擁有人批出的特許對該擁有人的表演者的經濟權利的權益的每名所有權繼承人均具約束力，但付出有值代價而並不知悉（不論實際知悉或法律構定的知悉）該特許存在的真誠購買人及從該購買人取得所有權的人則除外；在本部中，凡提述在該等權利的擁有人的特許下或在沒有其特許下而作出的任何事情，均據此解釋。

[*比照* 1988 c. 48 s. 191B U.K.]

217. 表演者的經濟權利的準擁有人

(1) 凡某表演的表演者藉就該表演的未來錄製品訂立並簽署（或由他人代其簽署）協議，宣稱將其表演者的經濟權利（全部或局部）轉讓他人，本條即適用。

(2) 如在該等權利產生之時，承讓人或在承讓人之下申索的人如相對於所有其他人而言，將會有權要求將該等權利歸屬予他，該等權利即憑藉本款歸屬該承讓人或其所有權繼承人。

(3) 表演者的經濟權利的準擁有人批出的特許對該準擁有人的表演者的經濟權利的權益（或預期權益）的每名所有權繼承人均具約束力，但付出有值代價而並不知悉（不論實際上知悉或法律構定的知悉）該特許存在的真誠購買人及從該購買人取得所有權的人則除外。

在本部中，凡提述在該等權利的擁有人的特許下或在沒有其特許下而作出的任何事情，均據此解釋。

(4) 在第(3)款中，“準擁有人”（prospective owner）就表演者的經濟權利而言，指憑藉第(1)款提及的協議而預期會有權具有該等權利的人。

[*比照* 1988 c. 48 s. 191C U.K.]

218. Exclusive licences

(1) In this Part an “exclusive licence” (專用特許) means a licence in writing signed by or on behalf of the owner of a performer’s economic rights authorizing the licensee to the exclusion of all other persons, including the person granting the licence, to do anything requiring the consent of the rights owner.

(2) The licensee under an exclusive licence has the same rights against a successor in title who is bound by the licence as he has against the person granting the licence.

[*cf. 1988 c. 48 s. 191D U.K.*]

219. Performer’s economic right to pass under will with unpublished original fixation

Where under a bequest (whether general or specific) a person is entitled beneficially or otherwise to any material thing containing an original fixation of a performance which was not published before the death of the testator, the bequest is, unless a contrary intention is indicated in the testator’s will or a codicil to it, to be construed as including any performer’s rights in relation to the fixation to which the testator was entitled immediately before his death.

[*cf. 1988 c. 48 s. 191E U.K.*]

220. Infringement actionable by rights owner

(1) An infringement of a performer’s economic rights or of any right conferred by this Part on a person having fixation rights is actionable by the rights owner.

(2) In an action for infringement of a performer’s economic rights or of any right conferred by this Part on a person having fixation rights all such relief by way of damages, injunctions, accounts or otherwise is available to the plaintiff as is available in respect of the infringement of any other property right.

(3) This section has effect subject to the following provisions of this Part.

[*cf. 1988 c. 48 s. 191I U.K.*]

221. Provisions as to damages in infringement action

(1) Where in an action for infringement of a performer’s economic rights or of any right conferred by this Part on a person having fixation rights it is shown that at the time of the infringement the defendant did not know, and had no reason to believe, that the rights subsisted in the fixation to which the action relates, the plaintiff is not entitled to damages against him, but without prejudice to any other remedy.

218. 專用特許

(1) 在本部中，“專用特許”(exclusive licence)指由表演者的經濟權利的擁有人或由他人代其簽署的書面特許，授權特許持有人在摒除所有其他人(包括批出該特許的人)的情況下作出須要該等權利的擁有人同意的任何事情。

(2) 在專用特許下的特許持有人所具有的相對於受特許約束的所有權繼承人而言的權利，與其所具有的相對於批出該特許的人而言的權利相同。

[*比照 1988 c. 48 s. 191D U.K.*]

219. 表演者的經濟權利根據遺囑而與未發表的原本錄製品一併轉移

凡某人根據遺贈(不論是一般遺贈或特定遺贈)而對錄載立遺囑人死亡之前仍未發表的表演的原本錄製品的任何實物享有實益或並非實益的權益，該遺贈將解釋為包括該立遺囑人在緊接其死亡前就該錄製品所具有的表演者的權利，但如立遺囑人的遺囑或遺囑更改附件顯示相反的意願，則屬例外。

[*比照 1988 c. 48 s. 191E U.K.*]

220. 權利的擁有人可就侵犯權利提起訴訟

(1) 就表演者的經濟權利或本部對具有錄製權的人所賦予的權利而言，該等權利的擁有人可就侵犯該等權利提起訴訟。

(2) 在就侵犯表演者的經濟權利或本部對具有錄製權的人所賦予的權利進行的訴訟中，原告人可得損害賠償、強制令、交出利潤或其他形式的濟助，與就侵犯任何其他產權而可得者相同。

(3) 本條在本部的以下條文的規限下具有效力。

[*比照 1988 c. 48 s. 191I U.K.*]

221. 關於侵犯權利訴訟中的損害賠償的規定

(1) 在就侵犯表演者的經濟權利或本部對具有錄製權的人所賦予的權利進行的訴訟中，如證明在侵犯該等權利時，被告人不知道和沒有理由相信該訴訟所關乎的錄製品有該等權利存在，則原告人無權向被告要求損害賠償，但任何其他補救則不受影響。

(2) The court may in an action for infringement of a performer's economic rights or of any right conferred by this Part on a person having fixation rights having regard to all the circumstances, and in particular to—

- (a) the flagrancy of the infringement;
- (b) any benefit accruing to the defendant by reason of the infringement; and
- (c) the completeness, accuracy and reliability of the defendant's business accounts and records,

award such additional damages as the justice of the case may require.

[*cf.* 1988 c. 48 s. 191J U.K.]

222. Right and remedies for exclusive licensee

(1) An exclusive licensee has, except against the owner of a performer's economic rights, the same rights and remedies in respect of matters occurring after the grant of the licence as if the licence had been an assignment.

(2) His rights and remedies are concurrent with those of the rights owner; and references in the relevant provisions of this Part to the rights owner are to be construed accordingly.

(3) In an action brought by an exclusive licensee by virtue of this section a defendant may avail himself of any defence which would have been available to him if the action had been brought by the rights owner.

[*cf.* 1988 c. 48 s. 191L U.K.]

223. Exercise of concurrent rights

(1) Where an action for infringement of a performer's economic rights brought by the rights owner or an exclusive licensee relates (wholly or partly) to an infringement in respect of which they have concurrent rights of action, the rights owner or, as the case may be, the exclusive licensee may not, without the leave of the court, proceed with the action unless the other is either joined as plaintiff or added as a defendant.

(2) A rights owner or exclusive licensee who is added as a defendant in pursuance of subsection (1) is not liable for any costs in the action unless he takes part in the proceedings.

(3) The above provisions do not affect the granting of interlocutory relief on an application by the rights owner or exclusive licensee alone.

(4) Where an action for infringement of a performer's economic rights is brought which relates (wholly or partly) to an infringement in respect of which the rights owner and an exclusive licensee have or had concurrent rights of action—

(2) 在就侵犯表演者的經濟權利或本部對具有錄製權的人所賦予的權利進行的訴訟中，法院在顧及案件的所有情況，尤其是以下情況後——

- (a) 該等權利受侵犯的昭彰程度；
- (b) 因侵犯該等權利而歸於被告人的利益；及
- (c) 被告人的業務帳目和紀錄的完整程度、準確程度及可靠程度，

可為在該案件達致公正所需而判給額外損害賠償。

[*比照* 1988 c. 48 s. 191J U.K.]

222. 專用特許持有人的權利和補救

(1) 專用特許持有人就特許批出之後所發生的事項，具有在猶如該項特許是一項轉讓的情況下相同的權利和補救，但相對表演者的經濟權利的擁有人而言，則屬例外。

(2) 專用特許持有人的權利和補救與該等權利的擁有人的權利和補救是同時具有的；而在本部的有關條文中，凡提述該等權利的擁有人，亦據此解釋。

(3) 在專用特許持有人憑藉本條而提起的訴訟中，被告人可引用的免責辯護，與在假使該訴訟是該等權利的擁有人提起的情況下被告人可引用的免責辯護相同。

[*比照* 1988 c. 48 s. 191L U.K.]

223. 行使同時具有的權利

(1) 凡表演者的經濟權利的擁有人或專用特許持有人就侵犯表演者的經濟權利提起訴訟，而該等權利的擁有人及專用特許持有人就該訴訟(全部或部分)所關乎的侵犯表演者的經濟權利同時具有訴訟權，則除非另一方加入作為原告人或被告人，否則該等權利的擁有人或專用特許持有人(視屬何情況而定)如沒有法院許可，不得進行該訴訟。

(2) 依據第(1)款加入作為被告人的該等權利的擁有人或專用特許持有人，除非參與法律程序，否則無須對訴訟的任何訟費負上法律責任。

(3) 上述條文不影響法院應該等權利的擁有人或專用特許持有人的單獨申請而批予非正審濟助。

(4) 凡就侵犯表演者的經濟權利提出訴訟，而該等權利的擁有人及專用特許持有人是現在或過去就該訴訟(全部或部分)所關乎的侵犯權利，同時具有訴訟權，則——

- (a) the court shall in assessing damages take into account—
 - (i) the terms of the licence; and
 - (ii) any pecuniary remedy already awarded or available to either of them in respect of the infringement;
- (b) no account of profits shall be directed if an award of damages has been made, or an account of profits has been directed, in favour of the other of them in respect of the infringement; and
- (c) the court shall if an account of profits is directed apportion the profits between them as the court considers just, subject to any agreement between them,

and these provisions apply whether or not the rights owner and the exclusive licensee are both parties to the action.

(5) The owner of a performer's economic rights shall notify any exclusive licensee having concurrent rights before applying for an order under section 228 (order for delivery up); and the court may on the application of the licensee make such order under section 228 as it thinks fit having regard to the terms of the licence.

[*cf. 1988 c. 48 s. 191M U.K.*]

Non-economic rights

224. Performers' non-economic rights

(1) The rights conferred on a performer by—
section 202 (consent required for fixation, etc. of unfixed performance);
section 206 (infringement of performer's rights by use of fixation made without consent); and
section 207 (infringement of performer's rights by importing, exporting, possessing or dealing with infringing fixation),
are not assignable or transmissible, except to the following extent.

They are referred to in this Part as "a performer's non-economic rights".

- (2) On the death of a person entitled to any such right—
 - (a) the right passes to such person as he may by testamentary disposition specifically direct; and
 - (b) if or to the extent that there is no such direction, the right is exercisable by his personal representatives.

(3) References in this Part to the performer, in the context of the person having any such right, are to be construed as references to the person for the time being entitled to exercise those rights.

(4) Where by virtue of subsection (2)(a) a right becomes exercisable by more than one person, it is exercisable by each of them independently of the other or others.

- (a) 法院在評估損害賠償時須考慮——
 - (i) 特許的條款；及
 - (ii) 該等權利的擁有人或專用特許持有人已就侵犯該等權利獲判給或可得到的金錢上的補救；
- (b) 如法院已就侵犯該等權利向他們當中的另一方判給損害賠償，或已指示交出所得利潤予另一方，則法院不得指示交出所得利潤；及
- (c) 如有交出所得利潤的指示，法院須在他們之間的協議的規限下按法院認為公正而將利潤分攤給他們，

不論該等權利的擁有人或專用特許持有人是否同時是訴訟的一方，此等條文仍然適用。

(5) 表演者的經濟權利的擁有人在申請根據第 228 條作出的命令(交付令)之前，須通知與他同時具有權利的任何專用特許持有人；而法院可應專用特許持有人的申請，在顧及該特許的條款後根據第 228 條作出其認為合適的命令。

[*比照 1988 c. 48 s. 191M U.K.*]

表演者的非經濟權利

224. 非經濟權利

(1) 以下條文賦予表演者的權利不得轉讓或轉傳——
第 202 條(進行非錄製表演的錄製等須獲得同意)；
第 206 條(藉使用在未獲同意下製作的錄製品而侵犯表演者的權利)；及
第 207 條(藉輸入、輸出或管有侵犯權利的錄製品或進行侵犯權利的錄製品交易而侵犯表演者的權利)，
但在以下條文範圍內則除外。

該等權利在本部中稱為“表演者的非經濟權利”。

- (2) 在有權具有該等權利的人死亡時——
 - (a) 該等權利即轉移予該人藉遺囑性質的處置而特別指示的人；及
 - (b) 如沒有上述指示或在沒有上述指示的範圍內，該等權利可由該人的遺產代理人行使。

(3) 在本部中，凡提述表演者，如屬在具有任何該等權利的人的文意中提述的，須解釋為提述當其時有權行使該等權利的人。

(4) 凡任何權利憑藉第(2)(a)款變為可由多於一人行使，則該權利可由各人獨立於其他人而行使。

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

[*cf.* 1988 c. 48 s. 192A U.K.]

225. Transmissibility of rights of person having fixation rights

(1) The rights conferred by this Part on a person having fixation rights are not assignable or transmissible.

(2) This does not affect section 208(2)(b) or (3)(b), so far as those provisions confer rights under this Part on a person to whom the benefit of a contract or licence is assigned.

[*cf.* 1988 c. 48 s. 192B U.K.]

226. Consent

(1) Consent for the purposes of this Part by a person having a performer's non-economic rights, or by a person having fixation rights, may be given in relation to a specific performance, to a specified description of performances or to performances generally, and may relate to past or future performances.

(2) A person having fixation rights in a performance is bound by any consent given by a person through whom he derives his rights under the exclusive fixation contract or licence in question, in the same way as if the consent had been given by him.

(3) Where a performer's non-economic right passes to another person, any consent binding on the person previously entitled binds the person to whom the right passes in the same way as if the consent had been given by him.

[*cf.* 1988 c. 48 s. 193 U.K.]

Remedies for infringement

227. Infringement actionable

An infringement of a performer's non-economic rights is actionable as a breach of statutory duty owed to the person entitled to the rights.

(5) 遺產代理人於某人死亡後憑藉本條就任何侵犯權利而追討所得的任何損害賠償，須作為該人遺產的一部分而轉予，猶如訴訟權利是在緊接該人死亡前已存在並已歸屬該人一樣。

[*比照* 1988 c. 48 s. 192A U.K.]

225. 具有錄製權的人的權利的可轉傳性

(1) 本部賦予具有錄製權的人的權利不得轉讓或轉傳。

(2) 在第 208(2)(b) 或 (3)(b) 條將本部的權利賦予合約或特許的利益所轉讓予的人的範圍內，第 (1) 款的條文並不影響第 208(2)(b) 或 (3)(b) 條。

[*比照* 1988 c. 48 s. 192B U.K.]

226. 同意

(1) 由具有表演者的非經濟權利的人或由具有錄製權的人為本部的施行而給予的同意，可就任何特定表演、任何指明類別的表演或一般地就表演而給予，並可關乎過往的或未來的表演。

(2) 如具有錄製權的人是根據有關的獨有錄製合約或特許透過另一人而取得該等權利的，則他須受該另一人所給予的任何同意以同樣的方式被約束，猶如該項同意曾由他給予一樣。

(3) 凡表演者的非經濟權利轉移予另一人，則對先前有權享有該權利的人具約束力的任何同意，以同樣的方式對獲轉移該權利的人具約束力，猶如該項同意曾由他給予一樣。

[*比照* 1988 c. 48 s. 193 U.K.]

侵犯權利的補救

227. 可就侵犯權利提起訴訟

對表演者的非經濟權利的侵犯，可作為違反對具有有關權利的人所負有的法定責任而就該項侵犯提起訴訟。

Delivery up of infringing fixation

228. Order for delivery up

(1) Where a person has in his possession, custody or control for the purpose of trade or business an infringing fixation of a performance, a person having performer's rights or fixation rights in relation to the performance under this Part may apply to the court for an order that the fixation be delivered up to him or to such other person as the court may direct.

(2) An application may not be made after the end of the period specified in section 230; and the court shall not make an order unless the court also makes, or it appears to the court that there are grounds for making, an order under section 231 (order as to disposal of infringing fixation).

(3) A person to whom a fixation is delivered up in pursuance of an order under this section shall, if an order under section 231 is not made, retain it pending the making of an order, or the decision not to make an order, under that section.

(4) Nothing in this section affects any other power of the court.

[*cf.* 1988 c. 48 s. 195 U.K.]

229. Meaning of "infringing fixation"

(1) In this Part "infringing fixation" (侵犯權利的錄製品), in relation to a performance, is to be construed in accordance with this section.

(2) For the purposes of a performer's rights, a fixation of the whole or any substantial part of a performance of his is an infringing fixation if it is made, otherwise than for private purposes, without his consent.

(3) For the purposes of the rights of a person having fixation rights, a fixation of the whole or any substantial part of a performance subject to the exclusive fixation contract is an infringing fixation if it is made, otherwise than for private purposes, without his consent or that of the performer.

(4) A fixation of a performance is also an infringing fixation if—

(a) it has been or is proposed to be imported into Hong Kong; and

(b) its making in Hong Kong would have constituted an infringement of the rights conferred by this Part in the performance in question, or a breach of an exclusive licence agreement relating to that performance.

(5) For the purposes of Division III (proceedings relating to importation of infringing fixations) "infringing fixation" (侵犯權利的錄製品) does not include a fixation of a performance—

(a) that was lawfully made in the country, territory or area where it was made;

交付侵犯權利的錄製品

228. 交付令

(1) 凡任何人為交易或業務的目的管有、保管或控制任何表演的侵犯權利的錄製品，則根據本部就該項表演具有表演者權利或錄製權的人可向法院申請命令，規定該錄製品須交付予該人或法院指示的其他人。

(2) 任何申請不得在第 230 條指明的期間完結之後提出；除非法院亦根據第 231 條(處置侵犯權利的錄製品的命令)作出命令或法院認為有理由根據第 231 條作出命令，否則法院不得作出命令。

(3) 如法院沒有根據第 231 條作出命令，則依據一項根據本條所作的命令而獲交付錄製品的人須保留該錄製品，以聽候法院根據該條作出命令或決定不作出命令。

(4) 本條並不影響法院的任何其他權力。

[*比照* 1988 c. 48 s. 195 U.K.]

229. “侵犯權利的錄製品”的涵義

(1) 在本部中，就表演而言，“侵犯權利的錄製品”(infringing fixation)須按照本條解釋。

(2) 就表演者權利而言，錄製某表演的整項或其任何實質部分的錄製品如未獲得該表演的表演者同意下製作而且並非作私人用途，則該錄製品屬侵犯權利的錄製品。

(3) 就具有錄製權的人的權利而言，錄製受獨有錄製合約所規限的表演的整項或其任何實質部分的錄製品，如未獲得具有錄製權的人的同意或該表演的表演者的同意下製作而且並非作私人用途，則該錄製品屬侵犯權利的錄製品。

(4) 一項表演的錄製品——

(a) 如已輸入或擬輸入香港；及

(b) 假使在香港製作，即會構成侵犯本部賦予、有關表演的權利，或違反關乎該表演的專用特許協議，

則該表演的錄製品亦屬侵犯權利的錄製品。

(5) 一項表演的錄製品——

(a) 如在製作該錄製品的國家、地區或地方是合法地製作的；

- (b) that has been or is proposed to be imported into Hong Kong; and
 (c) its making in Hong Kong would have constituted an infringement of the rights conferred by this Part in the performance in question, or a breach of an exclusive licence agreement relating to that performance.

(6) Where in any proceedings the question arises whether a fixation is an infringing fixation and it is shown—

- (a) that the fixation is a fixation of the unfixed performance; and
 (b) that rights conferred by this Part subsist in the performance or have subsisted at any time,

it shall be presumed until the contrary is proved that the fixation was made at a time when rights conferred by this Part subsisted in the performance.

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

- section 243(3) (fixations made for purposes of instruction or examination);
 section 245(3) (fixations made by educational establishments for educational purposes);
 section 251(2) (fixations of performance in electronic form retained on transfer of principal fixation); or
 section 256(3) (fixations made for the purposes of broadcast or cable programme),

but otherwise does not include a fixation made in accordance with any of the provisions of Division II.

(8) For the purposes of subsection (5)(a) “lawfully made” (合法地製作) does not include the making of a fixation in a country, territory or area where there is no law protecting rights in performances in the performance or where the rights in performances in the performance has expired.

[*cf.* 1988 c. 48 s. 197 U.K.]

Supplementary provisions with respect to delivery up

230. Period after which remedy of delivery up not available

(1) An application for an order under section 228 (order for delivery up in civil proceedings) may not be made after the end of the period of 6 years from the date on which the infringing fixation in question was made, subject to the following provisions of this section.

(b) 如已輸入或擬輸入香港；及

(c) 假使在香港製作，即會構成侵犯本部賦予有關表演的權利，或違反關乎該表演的專用特許協議，

則就第 III 分部 (關乎輸入侵犯權利的錄製品的法律程序) 而言，“侵犯權利的錄製品” (infringing fixation) 並不包括該錄製品。

(6) 凡在任何法律程序中出現某錄製品是否侵犯權利的錄製品的問題，並且可證明——

(a) 該錄製品屬非錄製表演的錄製品；及

(b) 本部賦予的權利存在於該表演或曾在任何時間存在於該表演，

則須推定該錄製品是在本部賦予的權利存在於該表演時製作，直至相反證明成立為止。

(7) 凡任何錄製品憑藉任何下列第 II 分部的條文而被視為屬侵犯權利的錄製品，則在本部中，“侵犯權利的錄製品” (infringing fixation) 包括該錄製品——

第 243(3) 條 (為教學或考試目的而製作的錄製品)；

第 245(3) 條 (教育機構為教育目的而製作的錄製品)；

第 251(2) 條 (在轉移主錄製品時以電子形式保留的表演的錄製品)；或

第 256(3) 條 (為廣播或有線傳播節目而製作的錄製品)，

但在其他情況下並不包括按照第 II 分部任何條文製作的錄製品。

(8) 就第 (5)(a) 款而言，“合法地製作” (lawfully made) 並不包括在沒有保障該表演的在表演中的權利的法律或該表演的在表演中的權利已屆滿的國家、地區或地方製作錄製品。

[*比照* 1988 c. 48 s. 197 U.K.]

有關交付的補充條文

230. 期限過後不得以交付作為補救

(1) 除本條以下條文另有規定外，任何人不得在自有關的侵犯權利的錄製品的製作日期起計 6 年期間完結後，根據第 228 條 (在民事法律程序中的交付令) 提出申請。

(2) If during the whole or any part of that period a person entitled to apply for an order—

(a) is under a disability; or

(b) is prevented by fraud or concealment from discovering the facts entitling him to apply,

an application may be made by him at any time before the end of the period of 6 years from the date on which he ceased to be under a disability or, as the case may be, could with reasonable diligence have discovered those facts.

(3) In subsection (2) “disability” (無行為能力) has the same meaning as in the Limitation Ordinance (Cap. 347).

[*cf.* 1988 c. 48 s. 203 U.K.]

231. Order as to disposal of infringing fixation

(1) An application may be made to the court for an order that an infringing fixation of a performance delivered up in pursuance of an order under section 228 should be—

(a) forfeited to such person having performer’s rights or fixation rights in relation to the performance as the court may direct; or

(b) destroyed or otherwise dealt with as the court may think fit, or for a decision that no such order should be made.

(2) In considering what order (if any) should be made, the court shall consider whether other remedies available in an action for infringement of the rights conferred by this Part would be adequate to compensate the person or persons entitled to the rights and to protect their interests.

(3) The power to make rules of court under section 54 of the Supreme Court Ordinance (Cap. 4) includes power to make rules of court for the purposes of this section.

(4) The rules of court for the purposes of this section may include rules as to the service of notice on persons having an interest in the fixation, and any such person is entitled—

(a) to appear in proceedings for an order under this section, whether or not he was served with notice; and

(b) to appeal against any order made, whether or not he appeared.

(5) An order under this section does not take effect until the end of the period within which notice of an appeal may be given or, if before the end of that period notice of appeal is duly given, until the final determination or abandonment of the proceedings on the appeal.

(6) Where there is more than one person interested in a fixation, the court shall make such order as it thinks just and may (in particular) direct that the fixation be sold, or otherwise dealt with, and the proceeds divided.

(2) 如在上述期間的整段或任何部分，有權申請命令的人——

(a) 無行為能力；或

(b) 因欺詐或隱瞞事實而使他不能夠發現令他有權提出申請的事實，則在自他不再無行為能力或在自他假使付出合理努力便應可發現該等事實(視屬何情況而定)的日期起計的6年期間完結之前的任何時間，他均可提出該申請。

(3) 在第(2)款中，“無行為能力”(disability)的涵義，與在《時效條例》(第347章)中該詞的涵義相同。

[*比照* 1988 c. 48 s. 203 U.K.]

231. 處置侵犯權利的錄製品的命令

(1) 凡有依據一項根據第228條作出的命令而交付的侵犯權利的錄製品，則可向法院申請命令，以將該侵犯權利的錄製品——

(a) 按法院的指示沒收歸予對該項表演具有表演者的權利或錄製權的人；或

(b) 銷毀或按法院認為合適的其他方式處置，或向法院申請不應作出該等命令的裁決。

(2) 在考慮應作出甚麼命令(如有的話)時，法院須考慮就侵犯本部賦予的權利進行訴訟可獲得的其他補救是否足以補償具有該等權利的人和保護他們的權益。

(3) 根據《最高法院條例》(第4章)第54條訂立法院規則的權力，包括為施行本條而訂立法院規則的權力。

(4) 為施行本條而訂立的法院規則，可包括與送達通知予對錄製品享有權益的人有關的規則，而任何該等人士均有權——

(a) 在為根據本條作出命令而進行的法律程序中出席(不論他是否獲送達通知)；及

(b) 提出上訴反對已作出的命令(不論他是否曾出席)。

(5) 根據本條作出的命令，在可給予上訴通知的期限完結時始生效，如上訴通知在該期限完結前妥為給予，則在上訴的法律程序獲最終裁定或遭放棄時始生效。

(6) 凡多於一人對某錄製品具有權益，法院須作出其認為公正的命令，並尤其可指示將該錄製品出售或作其他處置，並將收益分配。

(7) If the court decides that no order should be made under this section, the person in whose possession, custody or control the fixation was before being delivered up is entitled to its return.

(8) References in this section to a person having an interest in a fixation include any person in whose favour an order could be made in respect of the fixation under this section or under section 111 (which makes similar provision in relation to infringement of copyright).

[*cf.* 1988 c. 48 s. 204 U.K.]

232. Jurisdiction of District Court

- (1) The District Court may entertain proceedings under—
 (a) section 228 (order for delivery up of infringing fixation); or
 (b) section 231 (order as to disposal of infringing fixation),

where the value of the infringing fixation in question does not exceed the limit for actions in tort set out in section 32 of the District Court Ordinance (Cap. 336).

- (2) Nothing in this section affects the jurisdiction of the High Court.

[*cf.* 1988 c. 48 s. 205 U.K.]

Jurisdiction of Copyright Tribunal

233. Jurisdiction of Copyright Tribunal

(1) The Copyright Tribunal has jurisdiction under this Part to hear and determine proceedings under—

- (a) section 213 (application to give consent on behalf of owner of the right of reproduction);
 (b) paragraph 6 of Schedule 3 (contrary rights).

(2) The provisions of Division IX of Part II (general provisions relating to the Copyright Tribunal) apply in relation to the Tribunal when exercising any jurisdiction under this Part.

[*cf.* 1988 c. 48 s. 205B U.K.]

234. Qualifying person

In this Part “qualifying person” (合資格的人) means—

- (a) an individual domiciled or 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,

subject to section 236.

[*cf.* 1988 c. 48 s. 206 U.K.]

(7) 如法院裁定不應根據本條作出命令，則在錄製品交付之前管有、保管或控制該錄製品的人，具有獲發還該錄製品的權利。

(8) 在本條中，凡提述對錄製品具有權益的人，即包括可根據本條或根據第 111 條（該條就侵犯版權訂立相類的條文）就該錄製品作出命令而惠及的任何人。

[*比照* 1988 c. 48 s. 204 U.K.]

232. 地方法院的司法管轄權

(1) 凡有關的侵犯權利的錄製品的價值不超出《地方法院條例》(第 336 章) 第 32 條就侵權行為訴訟所列明的限額，則地方法院可受理根據以下條文進行的法律程序——

- (a) 第 228 條 (交付侵犯權利的錄製品的命令)；或
 (b) 第 231 條 (處置侵犯權利的錄製品的命令)。

(2) 本條並不影響高等法院的司法管轄權。

[*比照* 1988 c. 48 s. 205 U.K.]

版權審裁處的司法管轄權

233. 版權審裁處的司法管轄權

(1) 版權審裁處根據本部有根據以下各條文就法律程序進行聆訊和作出裁定的司法管轄權——

- (a) 第 213 條 (申請代複製權的擁有人給予同意)；
 (b) 附表 3 第 6 段 (相反權利)。

(2) 在審裁處行使本部所指的任何司法管轄權時，第 II 部第 IX 分部的條文 (關於版權審裁處的一般條文) 即就該審裁處而適用。

[*比照* 1988 c. 48 s. 205B U.K.]

234. 合資格的人

除第 236 條另有規定外，在本部中，“合資格的人” (qualifying person) 指——

- (a) 以香港或其他地方為居籍或居於香港或其他地方或有香港或其他地方的居留權的個人；或
 (b) 根據任何國家、地區或地方的法律成立為法團的團體。

[*比照* 1988 c. 48 s. 206 U.K.]

235. Ships, aircraft and hovercraft registered in Hong Kong

This Part applies to things done on a ship, aircraft or hovercraft registered under the law of Hong Kong as it applies to things done in Hong Kong.

[*cf.* 1988 c. 48 s. 210 U.K.]

236. Denial of protection to people of countries, etc. not giving adequate protection to Hong Kong performers

(1) Subject to subsection (5), if it appears to the Governor in Council that performer's rights of Hong Kong performers or fixation rights of Hong Kong qualifying persons are not adequately protected in a country, territory or area as a result of any prejudicial treatment given to those performers or qualifying persons by that country, territory or area, the Governor in Council may by regulation in accordance with this section restrict the rights conferred by this Part in relation to the performances of the performers connected with that country, territory or area or in relation to fixations made by qualifying persons connected with that country, territory or area.

(2) The Governor in Council shall designate in the regulation the country, territory or area concerned and provide that, for the purposes specified in the regulation, a performance given or a fixation made after a date specified in the regulation does not qualify for protection under this Part—

- (a) in the case of a performance, if at the time of the performance the performer is an individual domiciled or resident or having a right of abode in that country, territory or area (and not at the same time domiciled or resident or having a right of abode in Hong Kong); or
- (b) in the case of a fixation, if at the time of the making of the fixation, the maker is—
 - (i) an individual domiciled or resident or having a right of abode in that country, territory or area (and not at the same time domiciled or resident or having a right of abode in Hong Kong); or
 - (ii) a body incorporated under the law of that country, territory or area,

and the regulation may make such provision for all the purposes of this Part or for such purposes as are specified in the regulation, and either generally or in relation to such class of cases as are specified in the regulation, having regard to the nature and extent of that prejudicial treatment referred to in subsection (1).

235. 在香港註冊的船舶、航空器及氣墊船

本部適用於在根據香港法律而註冊的船舶、航空器或氣墊船上作出的事情，猶如其適用於在香港作出的事情一樣。

[*比照* 1988 c. 48 s. 210 U.K.]

236. 對於某些不給予香港表演者足夠保護的國家等的人民不給予保護

(1) 除第(5)款另有規定外，總督會同行政局如覺得香港表演者的表演者權利或香港合資格的人的錄製權因受到某國家、地區或地方對該等表演者或合資格的人的不利的待遇而在該國家、地區或地方沒有得到足夠的保護，則總督會同行政局可藉規例而按照本條，限制本部就與該國家、地區或地方有關的表演者的表演或與該國家、地區或地方有關的合資格的人製作的錄製品而賦予的權利。

(2) 總督會同行政局須在規例中指定有關的國家、地區或地方，並須規定就規例所指明的目的而言，在規例所指明的日期之後所作的表演或所製作的錄製品如符合以下說明，則該項表演或錄製品並不具備根據本部獲得保護的資格——

- (a) 如屬一項表演，在表演時，表演者是以該國家、地區或地方為居籍或在該國家、地區或地方居住或有該國家、地區或地方的居留權(但並非同時以香港為居籍或在香港居住或有香港的居留權)的個人；或
- (b) 如屬錄製品，在製作該錄製品時，製作者是——
 - (i) 以該國家、地區或地方為居籍或在該國家、地區或地方居住或有該國家、地區或地方的居留權(而並非同時以香港為居籍或在香港居住或有香港的居留權)的個人；或
 - (ii) 根據該國家、地區或地方的法律成立為法團的團體，

而規例可在顧及第(1)款所提述的不利待遇的性質及程度後，為本部的全部目的或為規例所指明的某些目的，一般地或就規例所指明的個案種類，訂定條文。

(3) In this section “Hong Kong performers” (香港表演者) means a performer who is an individual domiciled or resident or having a right of abode in Hong Kong.

(4) In this section “Hong Kong qualifying persons” (香港合資格的人) means a qualifying person who is—

(a) an individual domiciled or resident or having a right of abode in Hong Kong; or

(b) a body incorporated under the law of Hong Kong.

(5) The Governor in Council shall not exercise his power under this section in relation to a country, territory or area which is a party to a bilateral or multilateral copyright or related right convention to which Hong Kong is also a party or the application of which has been extended to Hong Kong.

237. Transitional provisions and savings

Schedule 3 contains transitional provisions and savings relating to performances given and acts or events occurring, before the commencement of this Part, and otherwise with respect to the operation of the provisions of this Part.

Interpretation

238. Expressions having same meaning as in copyright provisions

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

article in transit;
authorized officer;
broadcast;
business;
cable programme;
cable programme service;
Commissioner;
Copyright Tribunal;
export;
film;
import;
literary work;
published; and
sound recording.

(3) 在本條中，“香港表演者”(Hong Kong performers)指以香港為居籍或在香港居住或有香港的居留權的屬個人的表演者。

(4) 在本條中，“香港合資格的人”(Hong Kong qualifying persons)指以下合資格的人——

(a) 以香港為居籍或在香港居住或有香港的居留權的個人；或

(b) 是根據香港法律成立為法團的團體。

(5) 總督會同行政局不得就香港亦是締約方或延伸適用於香港的雙邊或多邊版權或有關權利的公約的締約國家、地區或地方行使其在本條下的權力。

237. 過渡性條文及保留條文

附表3載有過渡性條文及保留條文。該等條文關乎在本部生效前作出的表演以及所作出的作為或發生的事情，並在其他方面關乎本部條文的實施。

釋義

238. 與版權條文中的詞句具有相同涵義的詞句

(1) 以下詞句在本部中的涵義，與該等詞句在第II部(版權)中的涵義相同——
文學作品；
有線傳播節目；
有線傳播節目服務；
版權審裁處；
業務；
過境物品；
發表；
影片；
廣播；
輸入；
輸出；
聲音紀錄；
獲授權人員；及
總監。

(2) The provisions of section 8(3) to (5), sections 9(4) and 27(4) (supplementary provisions relating to broadcasting and cable programme services) apply for the purposes of this Part, and in relation to an infringement of the rights conferred by this Part, as they apply for the purposes of Part II and in relation to an infringement of copyright.

[*cf.* 1988 c. 48 s. 211 U.K.]

239. Index of defined expressions

The following Table shows provisions defining or otherwise explaining expressions used in this Part (other than provisions defining or explaining an expression used only in the same section)—

broadcast (and related expressions)	section 238 (and section 8)
business	section 238(1) (and section 198)
cable programme, cable programme service (and related expressions)	section 238 (and section 9)
consent of performer (in relation to performer's economic rights)	section 215(2)
copy and copying	section 203
exclusive fixation contract	section 208(1)
exclusive licence	section 218
film	section 238(1) (and section 7)
fixation (of a performance)	section 200(2)
fixation rights (person having)	section 208(2) and (3)
infringing fixation	section 229
literary work	section 238(1) (and section 4(1))
performance	section 200(2)
performer	section 200(2)
performer's economic rights	section 215(1)
performer's non-economic rights	section 224(1)
published	section 238(1) (and section 196)
qualifying performance	section 201
qualifying person	section 234
right of distribution	section 204(5)
right of making available to the public	section 205(5)
right of reproduction	section 203(4)
rights owner (in relation to performer's economic rights)	section 215(3) and (4)
sound recording	section 238(1) (and section 6)

[*cf.* 1988 c. 48 s. 212 U.K.]

(2) 第 8(3) 至 (5) 條、第 9(4) 及 27(4) 條 (關於廣播及有線傳播節目服務的補充條文的) 條文為施行本部並就侵犯本部賦予的權利而適用，一如該等條文為施行第 II 部並就侵犯版權而適用一樣。

[*比照* 1988 c. 48 s. 211 U.K.]

239. 界定詞句的索引

下表顯示界定或以其他方式解釋本部所用詞句的條文 (但就只在同一條中使用的詞句作出界定或解釋的條文則除外)——

分發權	第 204(5) 條
文學作品	第 238(1) 條 (及第 4(1) 條)
向公眾提供的權利	第 205(5) 條
合資格的人	第 234 條
合資格表演	第 201 條
有線傳播節目、有線傳播節目服務 (及相關詞句)	第 238 條 (及第 9 條)
表演	第 200(2) 條
表演者	第 200(2) 條
表演者的同意 (關於表演者的經濟權利)	第 215(2) 條
表演者的非經濟權利	第 224(1) 條
表演者的經濟權利	第 215(1) 條
侵犯權利的複製品	第 229 條
專用特許	第 218 條
業務	第 238(1) 條 (及第 198 條)
發表	第 238(1) 條 (及第 196 條)
複製品及複製	第 203 條
複製權	第 203(4) 條
影片	第 238(1) 條 (及第 7 條)
廣播 (及相關詞句)	第 238 條 (及第 8 條)
獨有錄製合約	第 208(1) 條
聲音紀錄	第 238(1) 條 (及第 6 條)
錄製品 (表演的)	第 200(2) 條
錄製權 (具有錄製權的人)	第 208(2) 及 (3) 條
權利擁有人 (就表演者的經濟權利)	第 215(3) 及 (4) 條

[*比照* 1988 c. 48 s. 212 U.K.]

DIVISION II

第 II 分部

RIGHTS IN PERFORMANCES: PERMITTED ACTS

在表演中的權利：允許的作為

240. Introductory

(1) The provisions of this Division specify acts which may be done in relation to a performance or fixation notwithstanding the rights conferred by this Part; they relate only to the question of infringement of those rights and do not affect any other right or obligation restricting the doing of any of the specified acts.

(2) In determining whether an act specified in this Division may be done in relation to a performance or fixation notwithstanding the rights conferred by this Part, the primary consideration is that the act does not conflict with a normal exploitation of the performance or fixation by the rights owner of the rights conferred by this Part and does not unreasonably prejudice the legitimate interests of the rights owner of those rights.

(3) No inference is to be drawn from the description of any act which may by virtue of this Division be done without infringing the rights conferred by this Part as to the scope of those rights.

(4) The provisions of this Division are to be construed independently of each other, so that the fact that an act does not fall within one provision does not mean that it is not covered by another provision.

[*cf.* 1988 c. 48 Sch. 2 para. 1 U.K.]

241. Criticism, reviews and news reporting

(1) Fair dealing with a performance or fixation—

(a) for the purpose of criticism or review, of that or another performance or fixation, or of a work; or

(b) for the purpose of reporting current events,

does not infringe any of the rights conferred by this Part.

(2) Expressions used in this section have the same meaning as in section 39.

[*cf.* 1988 c. 48 Sch. 2 para. 2 U.K.]

242. Incidental inclusion of performance or fixation

(1) The rights conferred by this Part are not infringed by the incidental inclusion of a performance or fixation in a sound recording, film, broadcast or cable programme.

240. 引言

(1) 本分部的條文指明某些在儘管有本部賦予的權利的情況下仍可就表演或錄製品而作出的作為；該等條文只關乎侵犯該等權利的問題而不影響限制作出任何該等指明作為的任何其他權利或義務。

(2) 在決定本分部指明的作為是否可在儘管有本部賦予的權利的情況下就表演或錄製品而作出時，基本考慮因素是該項作為並不與具有本部賦予的權利的權利擁有人對該表演或錄製品的正常利用有所抵觸以及該項作為並沒有不合理地損害該等權利的權利擁有人的合法權益。

(3) 不得從憑藉本分部可予作出而不屬侵犯本部賦予的權利的任何作為的描述，而推論該等權利的範圍。

(4) 本分部各條條文的解釋須互相獨立，故某作為並不屬於某條文的範圍，並不表示另一條文不涵蓋該作為。

[*比照* 1988 c. 48 Sch. 2 para. 1 U.K.]

241. 批評、評論及新聞報導

(1) 為以下目的而公平處理任何表演或錄製品，並不屬侵犯本部賦予的任何權利——

(a) 批評或評論該項表演或錄製品或另一表演或錄製品或批評或評論某一作品；或

(b) 報導時事。

(2) 本條中所用詞句的涵義與第 39 條中該等詞句的涵義相同。

[*比照* 1988 c. 48 Sch. 2 para. 2 U.K.]

242. 附帶地包括表演或錄製品

(1) 任何表演或錄製品如附帶地包括在任何聲音紀錄、影片、廣播或有線傳播節目內，並不屬侵犯本部賦予的權利。

(2) Those rights are also not infringed by anything done in relation to copies of, or the playing, showing, broadcasting or inclusion in a cable programme service of, anything whose making was, by virtue of subsection (1), not an infringement of those rights.

(3) A performance or fixation so far as it consists of music, or words spoken or sung with music, is not regarded as incidentally included in a sound recording, broadcast or cable programme if it is deliberately included.

(4) Expressions used in this section have the same meaning as in section 40.

[*cf. 1988 c. 48 Sch. 2 para. 3 U.K.*]

243. Things done for purposes of instruction or examination

(1) The rights conferred by this Part are not infringed by the copying of a fixation of a performance, to a reasonable extent, in the course of instruction, or of preparation for instruction, in the making of films or film sound-tracks, if the copying is done by a person giving or receiving instruction.

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

- (a) by the copying of a fixation of a performance for the purposes of setting or answering the questions in an examination; or
- (b) by anything done for the purposes of an examination by way of communicating the questions to the candidates.

(3) Where a fixation which would otherwise be an infringing fixation is made in accordance with this section but is subsequently dealt with, it is treated as an infringing fixation for the purposes of that dealing, and if that dealing infringes any right conferred by this Part, for all subsequent purposes.

For this purpose “dealt with” (進行交易) means sold or let for hire, or offered or exposed for sale or hire.

(4) Expressions used in this section have the same meaning as in section 41.

[*cf. 1988 c. 48 Sch. 2 para. 4 U.K.*]

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

(1) The playing or showing of a sound recording, film, broadcast or cable programme at an educational establishment for the purposes of instruction before an audience consisting of teachers and pupils at the establishment and other persons directly connected with the activities of the establishment is not a playing or showing of a performance in public for the purposes of infringement of the rights conferred by this Part.

(2) 任何東西的製作若憑藉第(1)款而不屬侵犯該等權利，則就該等東西的複製品而作出的任何事情，或播放、放映或廣播該東西或將該東西包括在有線傳播節目服務內，亦不屬侵犯該等權利。

(3) 蓄意將由音樂組成或由伴隨音樂而講出或唱出的文字組成的表演或錄製品包括在任何聲音紀錄、廣播或有線傳播節目內，並不視為附帶地包括在該等聲音紀錄、廣播或有線傳播節目內。

(4) 本條中所用詞句的涵義與第40條中該等詞句的涵義相同。

[*比照 1988 c. 48 Sch. 2 para. 3 U.K.*]

243. 為教學或考試的目的而作出的事情

(1) 在影片製作或影片聲帶製作的教學或教學準備過程中，由教學或接受教學的人將任何表演的錄製品在合理的範圍內複製，並不屬侵犯本部所賦予的權利。

(2) 以下作為並不屬侵犯本部所賦予的權利——

- (a) 為在考試中擬出試題或解答試題而複製任何表演的錄製品；或
- (b) 為考試的目的，藉向考生傳達問題而作出的任何事情。

(3) 凡任何錄製品(假使非因本條該錄製品即屬侵犯權利的錄製品)按照本條製作，但其後有人進行如此製作的錄製品交易，則就該項交易而言，該錄製品須視為侵犯權利的錄製品，又如該項交易侵犯本部所賦予的任何權利，則就所有其後的目的而言，該錄製品須視為侵犯權利的錄製品。

就本款而言，“進行交易”(dealt with)指出售、出租、要約出售或要約出租，或為出售或出租而展示。

(4) 本條中所用詞句的涵義與第41條中該等詞句的涵義相同。

[*比照 1988 c. 48 Sch. 2 para. 4 U.K.*]

244. 在教育機構播放或放映聲音紀錄、影片、廣播或有線傳播節目

(1) 在任何教育機構內為教學的目的而播放或放映任何聲音紀錄、影片、廣播或有線傳播節目，而觀眾或聽眾只包括該機構的教師和學生及與該機構的活動有直接關連的其他人，則就侵犯本部所賦予的權利而言該項播放或放映不屬公開播放或放映任何表演。

(2) A person is for this purpose directly connected with the activities of an educational establishment if he is the parent or guardian of a pupil at the establishment.

(3) Expressions used in this section have the same meaning as in section 43.

[*cf. 1988 c. 48 Sch. 2 para. 5 U.K.*]

245. Recording of broadcasts and cable programmes by educational establishments

(1) A recording of a broadcast or cable programme, or a copy of such a recording, may be made by or on behalf of an educational establishment for the educational purposes of that establishment without thereby infringing any of the rights conferred by this Part in relation to any performance or fixation included in it.

(2) Recording or copying is not authorized by this section if, or to the extent that, licences under licensing schemes are available authorizing the recording or copying in question and the person making the recordings or copies knew or ought to have been aware of that fact.

(3) Where a recording or copy which would otherwise be an infringing fixation is made in accordance with this section but is subsequently dealt with, it is treated as an infringing fixation for the purposes of that dealing, and if that dealing infringes any right conferred by this Part, for all subsequent purposes.

For this purpose “dealt with” (進行交易) means sold or let for hire, or offered or exposed for sale or hire.

(4) Expressions used in this section have the same meaning as in section 44.

[*cf. 1988 c. 48 Sch. 2 para. 6 U.K.*]

246. Copying by librarians or archivists: articles of cultural or historical importance

(1) The librarian or archivist of a specified library or archive may make a copy of an article of cultural or historical importance or interest and deposit the copy at the library or archive without infringing any right conferred by this Part in respect of that article if the article is likely to be lost to Hong Kong through sale or export.

(2) Expressions used in this section have the same meaning as in section 53.

[*cf. 1988 c. 48 Sch. 2 para. 7 U.K.*]

(2) 就此而言，任何人如屬教學機構的學生的父母或監護人，該人即屬與該機構的活動有直接關連的人。

(3) 本條中所用詞句的涵義與第 43 條中該等詞句的涵義相同。

[*比照 1988 c. 48 Sch. 2 para. 5 U.K.*]

245. 由教學機構製作的廣播及有線傳播節目的紀錄

(1) 任何廣播或有線傳播節目的紀錄或該紀錄的複製品可由教育機構或代教育機構為該機構的教育目的而製作，而不屬侵犯本部就包括在其中的任何表演或錄製品而賦予的任何權利。

(2) 如有特許計劃下的特許授權進行有關的記錄或複製，而製作紀錄或複製品的人已知道或應已知道該事實，則本條並不授權進行有關的記錄或複製或在該特許所授權的範圍內進行有關的記錄或複製。

(3) 凡任何紀錄或複製品(假使非因本條該紀錄或複製品即屬侵犯權利的錄製品)按照本條製作，但其後有人進行該紀錄或複製品的交易，則就該項交易而言，該紀錄或複製品須視為侵犯權利的錄製品，又如該項交易侵犯本部賦予的任何權利，則就所有其後的目的而言，該紀錄或複製品須視為侵犯權利的錄製品。

就本款而言，“進行交易”(dealt with)指出售、出租、要約出售或要約出租，或為出售或出租而展示。

(4) 本條中所用詞句的涵義與第 44 條中該等詞句的涵義相同。

[*比照 1988 c. 48 Sch. 2 para. 6 U.K.*]

246. 由圖書館館長或檔案室負責人製作複製品：在文化或歷史方面有重要性的物品

(1) 如某物品在文化或歷史方面有重要性或有令人感興趣之處，並相當可能因出售或輸出而使香港失去該物品，則指明圖書館的館長或指明檔案室的負責人可製作該物品的複製品和將該複製品存放於該圖書館或檔案室，而不屬侵犯本部就該物品賦予的任何權利。

(2) 本條中所用詞句的涵義與第 53 條中該等詞句的涵義相同。

[*比照 1988 c. 48 Sch. 2 para. 7 U.K.*]

247. Legislative Council and judicial proceedings

(1) The rights conferred by this Part are not infringed by anything done for the purposes of the proceedings of the Legislative Council or judicial proceedings or for the purpose of reporting such proceedings.

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

[*cf. 1988 c. 48 Sch. 2 para. 8 U.K.*]

248. Statutory inquiries

(1) The rights conferred by this Part are not infringed by anything done for the purposes of the proceedings of a statutory inquiry or for the purpose of reporting any such proceedings held in public.

(2) Expressions used in this section have the same meaning as in section 55.

[*cf. 1988 c. 48 Sch. 2 para. 9 U.K.*]

249. Public records

(1) Material which is comprised in public records which are open to public inspection may be copied, and a copy may be supplied to any person without infringing any right conferred by this Part.

(2) Expressions used in this section have the same meaning as in section 58.

[*cf. 1988 c. 48 Sch. 2 para. 10 U.K.*]

250. Acts done under statutory authority

(1) Where the doing of a particular act is specifically authorized by an Ordinance, whenever enacted, then, unless the Ordinance provides otherwise, the doing of that act does not infringe the rights conferred by this Part.

(2) Nothing in this section is to be construed as excluding any defence of statutory authority otherwise available under or by virtue of any Ordinance.

(3) Expressions used in this section have the same meaning as in section 59.

[*cf. 1988 c. 48 Sch. 2 para. 11 U.K.*]

247. 立法局程序及司法程序

(1) 為立法局程序或司法程序的目的或為報導該等程序的目的而作出任何事情，並不屬侵犯本部所賦予的權利。

(2) 本條中所用詞句的涵義與第 54 條中該等詞句的涵義相同。

[*比照 1988 c. 48 Sch. 2 para. 8 U.K.*]

248. 法定研訊

(1) 為法定研訊程序的目的或為報導公開進行的該等程序的目的而作出任何事情，並不屬侵犯本部賦予的權利。

(2) 本條中所用詞句的涵義與第 55 條中該等詞句的涵義相同。

[*比照 1988 c. 48 Sch. 2 para. 9 U.K.*]

249. 公共紀錄

(1) 開放予公眾查閱的公共紀錄內的材料可予複製，複製品亦可供應予任何人，而該項複製及供應並不屬侵犯本部所賦予的任何權利。

(2) 本條中所用詞句的涵義與第 58 條中該等詞句的涵義相同。

[*比照 1988 c. 48 Sch. 2 para. 10 U.K.*]

250. 根據法定權限所作出的作為

(1) 凡某條例 (不論何時制定) 明確授權作出某作為，則除非該條例另有規定，否則作出該作為不屬侵犯本部賦予的權利。

(2) 本條不得解釋為令任何可根據或憑藉任何條例而提出的法定權限免責辯護不得提出。

(3) 本條中所用詞句的涵義與第 59 條中該等詞句的涵義相同。

[*比照 1988 c. 48 Sch. 2 para. 11 U.K.*]

251. Transfer of fixations of performances in electronic form

(1) This section applies where a fixation of a performance in electronic form (other than such a fixation which was made available to the public) has been purchased on terms which, expressly or impliedly or by virtue of any rule of law, allow the purchaser to make further fixations in connection with his use of the fixation.

(2) If there are no express terms—

(a) prohibiting the transfer of the fixation by the purchaser, imposing obligations which continue after a transfer, prohibiting the assignment of any consent or terminating any consent on a transfer; or

(b) providing for the terms on which a transferee may do the things which the purchaser was permitted to do,

anything which the purchaser was allowed to do may also be done by a transferee without infringement of the rights conferred by this Part, but any fixation made by the purchaser which is not also transferred is to be treated as an infringing fixation for all purposes after the transfer.

(3) Subsection (2) applies where the original purchased fixation is no longer usable and what is transferred is a further copy used in its place.

(4) The above provisions also apply on a subsequent transfer, with the substitution for references in subsection (2) to the purchaser of references to the subsequent transferor.

(5) This section does not apply in relation to a fixation purchased before the commencement of this Part.

(6) Expressions used in this section have the same meaning as in section 64.

[*cf. 1988 c. 48 Sch. 2 para. 12 U.K.*]

252. Certain copying permitted when performances made available to the public

The rights conferred by this Part in a fixed performance are not infringed by the copying of a fixation which is reasonably required for the viewing or listening of the fixation by a member of the public to whom the fixation is made available (within the meaning of section 205) provided that such act does not conflict with a normal exploitation of the fixation and does not unreasonably prejudice the legitimate interests of the performer or the person who has fixation rights in relation to the performance.

251. 表演的電子形式錄製品的轉移

(1) 凡有人購買任何表演的電子形式的錄製品(已向公眾提供的該等錄製品除外),而按購買的條款(不論是明訂的或是隱含的或是憑藉任何法律規則而有的條款),是容許該購買者製作與其使用該錄製品有關連的進一步錄製品的,本條即適用。

(2) 如沒有明訂條款——

(a) 禁止購買者將該錄製品轉移、施加在轉移後仍繼續的義務、禁止轉讓任何同意,或規定同意在轉移時即告終止;或

(b) 規定受讓人可在甚麼條款下作出購買者獲允許作出的事情,

則凡屬購買者獲允許作出的事情,受讓人均可作出,而不屬侵犯本部賦予的權利;但購買者所製作的任何錄製品,如沒有一併轉移,則在該項轉移後,該等錄製品就任何目的而言均視為侵犯權利的錄製品。

(3) 如原本購買的錄製品已不能再用,而所轉移的是取代該錄製品而使用的進一步複製品,則第(2)款亦適用。

(4) 上述條文亦適用於其後的轉移,但在第(2)款中提述購買者,須代以提述其後的出讓人。

(5) 就本部生效日期之前購買的錄製品而言,本條不適用。

(6) 本條中所用詞句的涵義與第 64 條中該等詞句的涵義相同。

[*比照 1988 c. 48 Sch. 2 para. 12 U.K.*]

252. 在向公眾提供表演時允許進行的某些複製

凡某錄製品向公眾人士提供(如第 205 條所指者),而為讓該等公眾人士中任何人觀看或聆聽該錄製品而合理地需要複製該錄製品,該項複製在符合以下條件的前提下並不屬侵犯本部賦予錄製表演的權利:該作為並不抵觸對該錄製品的正常利用,且並非不合理地妨害表演者或具有錄製權的人對該表演的合法權益。

253. Use of fixations of spoken words in certain cases

(1) Where a fixation of the reading or recitation of a literary work is made for the purpose—

- (a) of reporting current events; or
- (b) of broadcasting or including in a cable programme service the whole or part of the reading or recitation,

it is not an infringement of the rights conferred by this Part to use the fixation (or to copy the fixation and use the copy) for that purpose, if the conditions in subsection (2) are met.

(2) The conditions are that—

- (a) the fixation is a direct fixation of the reading or recitation and is not taken from a previous fixation or from a broadcast or cable programme;
- (b) the making of the fixation was not prohibited by or on behalf of the person giving the reading or recitation;
- (c) the use made of the fixation is not of a kind prohibited by or on behalf of that person before the fixation was made; and
- (d) the use is by or with the authority of a person who is lawfully in possession of the fixation.

(3) Expressions used in this section have the same meaning as in section 67.

[cf. 1988 c. 48 Sch. 2 para. 13 U.K.]

254. Fixations of folksongs

(1) A fixation of a performance of a song may be made for the purpose of including it in an archive maintained by a designated body without infringing any of the rights conferred by this Part, if the conditions in subsection (2) are met.

(2) The conditions are that—

- (a) the words are unpublished and of unknown authorship at the time the fixation is made;
- (b) the making of the fixation does not infringe any copyright; and
- (c) its making is not prohibited by any performer.

(3) Copies of a fixation made in reliance on subsection (1) and included in an archive maintained by a designated body may, if the prescribed conditions are met, be made and supplied by the archivist without infringing any of the rights conferred by this Part.

(4) In this section—

“designated body” (指定機構) means a body designated for the purposes of section 70; and

253. 在某些情況下使用講出的文字的字錄製品

(1) 凡為下列目的製作文學作品的誦讀或背誦的字錄製品——

- (a) 報導時事；或
- (b) 廣播該誦讀或背誦的整項或其部分，或將該誦讀或背誦的整項或其部分包括在有線傳播節目服務內，

則如第 (2) 款所述條件獲符合，使用該錄製品 (或複製該錄製品並使用該複製品) 作上述用途，並不屬侵犯本部賦予的權利。

(2) 有關的條件為——

- (a) 該錄製品是誦讀或背誦的直接錄製品，而非取自以前的錄製品或取自廣播或有線傳播節目；
- (b) 誦讀或背誦的人或代表該人的人不禁止製作該錄製品；
- (c) 將該錄製品作有關使用並非屬在該錄製品製作前由或代表該人所禁止的使用類別；及
- (d) 由合法管有該錄製品的人或在其授權下作有關使用。

(3) 本條中所用詞句的涵義與第 67 條中該等詞句的涵義相同。

[比照 1988 c. 48 Sch. 2 para. 13 U.K.]

254. 民歌的字錄製品

(1) 凡為了將歌曲表演的錄製品包括在指定機構所經辦的檔案室內，而將歌曲的表演製作成錄製品，則如第 (2) 款所列條件獲符合，該項製作並不屬侵犯本部賦予的任何權利。

(2) 有關的條件為——

- (a) 在製作有關錄製品時該等歌曲的歌詞未曾發表並屬作者不為人知；
- (b) 有關錄製品的製作不屬侵犯任何版權；及
- (c) 有關錄製品的製作未為任何表演者禁止。

(3) 如訂明條件獲符合，則依據第 (1) 款製作並包括在指定機構所經辦的檔案室內的錄製品，可由檔案室負責人複製和供應予他人，而不屬侵犯本部賦予的任何權利。

(4) 在本條中——

“訂明條件” (the prescribed conditions) 指為施行第 70 條而訂明的條件；及

“the prescribed conditions” (訂明條件) means the conditions prescribed for the purposes of that section, and other expressions used in this section have the same meaning as in that section.

[*cf. 1988 c. 48 Sch. 2 para. 14 U.K.*]

255. Performance, showing or playing of works for purposes of club, society, etc.

(1) It is not an infringement of any right conferred by this Part to perform, show or play a work (other than a broadcast or a cable programme) as part of the activities of, or for the benefit of, a club, society or other organization if the following conditions are met.

(2) The conditions are—

- (a) that the club, society or organization is not established or conducted for profit and its main objects are charitable or are otherwise concerned with the advancement of religion, education or social welfare; and
- (b) that the proceeds of any charge for admission to the place where the work is to be performed, shown or played are applied solely for the purposes of the club, society or organization.

(3) Expressions used in this section have the same meaning as in section 76.

[*cf. 1988 c. 48 Sch. 2 para. 15 U.K.*]

256. Incidental fixation for purposes of broadcast or cable programme

(1) A person who proposes to broadcast a fixation of a performance, or include a fixation of a performance in a cable programme service, in circumstances not infringing the rights conferred by this Part is to be treated as having consent for the purposes of this Part for the making of a further fixation for the purposes of the broadcast or cable programme.

(2) That consent is subject to the condition that the further fixation—

- (a) must not be used for any other purpose; and
- (b) must be destroyed within 3 months of being first used for broadcasting the performance or including it in a cable programme service.

(3) A fixation made in accordance with this section is treated as an infringing fixation—

- (a) for the purposes of any use in breach of the condition mentioned in subsection (2)(a); and
- (b) for all purposes after that condition or the condition mentioned in subsection (2)(b) is broken.

“指定機構” (designated body) 指為施行第 70 條而指定的機構，而本條中所用其他詞句的涵義與該條中該等詞句的涵義相同。

[*比照 1988 c. 48 Sch. 2 para. 14 U.K.*]

255. 為會社、社團等目的而表演、放映或展示或播放作品

(1) 凡作為某會社、社團或其他組織的活動的一部分或為該會社、社團或其他組織的利益而表演、放映或展示或播放作品 (廣播或有線傳播節目除外)，並符合以下條件，則不屬侵犯本部賦予的任何權利。

(2) 有關的條件為——

- (a) 該會社、社團或組織並非為牟利而成立或經營，而其主要宗旨屬慈善性質，或是關於宣揚宗教，或推廣教育或社會福利；及
- (b) 表演、放映或展示或播放該作品的地方的入場費的收益，純粹是運用於該會社、社團或組織的目的。

(3) 本條中所用詞句的涵義與第 76 條中該等詞句的涵義相同。

[*比照 1988 c. 48 Sch. 2 para. 15 U.K.*]

256. 為廣播或有線傳播節目而附帶地製作錄製品

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

(2) 該項同意須受以下條件規限——

- (a) 有關的進一步錄製品不得用作任何其他用途；及
- (b) 在自有關的進一步錄製品首次用作廣播該項表演或將該項表演包括在有線傳播節目服務內起計的 3 個月內，必須將該有關的進一步錄製品銷毀。

(3) 按照本條製作的錄製品——

- (a) 就於違反第(2)(a)款提及的條件的情況下使用而言，須視為侵犯權利的錄製品；及
- (b) 在該條件或第(2)(b)款提及的條件遭違反後，就所有目的而言，須視為侵犯權利的錄製品。

(4) Expressions used in this section have the same meaning as in section 77.

[*cf. 1988 c. 48 Sch. 2 para. 16 U.K.*]

257. Recordings for purposes of supervision and control of broadcasts and cable programmes

(1) The rights conferred by this Part are not infringed by the making or use by Radio Television Hong Kong for the purpose of maintaining supervision and control over programmes broadcast by them, of recordings of those programmes.

(2) The rights conferred by this Part are not infringed by the making or use of recordings—

- (a) by the Broadcasting Authority for the performance of its functions mentioned in section 9 of the Broadcasting Authority Ordinance (Cap. 391); or
- (b) pursuant to the instructions of the Broadcasting Authority in the performance of those functions.

(3) Expressions used in this section have the same meaning as in section 78.

[*cf. 1988 c. 48 Sch. 2 para. 17 U.K.*]

258. Free public showing or playing of broadcast or cable programme

(1) The showing or playing in public of a broadcast or cable programme (other than an encrypted broadcast or cable programme) to an audience who have not paid for admission to the place where the broadcast or programme is to be seen or heard does not infringe any right conferred by this Part in relation to a performance or fixation included in—

- (a) the broadcast or cable programme; or
- (b) any sound recording or film which is played or shown in public by reception of the broadcast or cable programme.

(2) The audience are treated as having paid for admission to a place—

- (a) if they have paid for admission to a place of which that place forms part; or
- (b) if goods or services are supplied at that place (or a place of which it forms part)—

- (i) at prices which are substantially attributable to the facilities afforded for seeing or hearing the broadcast or programme; or

(4) 本條中所用詞句的涵義與第 77 條中該等詞句的涵義相同。

[*比照 1988 c. 48 Sch. 2 para. 16 U.K.*]

257. 為監管和控制廣播及有線傳播節目而製作紀錄

(1) 香港電台為維持監管和控制其廣播的節目而將該等節目製作成紀錄，或使用該等紀錄，並不屬侵犯本部賦予的權利。

(2) 以下製作或使用紀錄並不屬侵犯本部賦予的權利——

- (a) 廣播事務管理局為履行《廣播事務管理局條例》(第 391 章) 第 9 條提及的該局的職能而製作或使用錄製品；或
- (b) 履行該等職能而依據該局的指示製作或使用錄製品。

(3) 本條中所用詞句的涵義與第 78 條中該等詞句的涵義相同。

[*比照 1988 c. 48 Sch. 2 para. 17 U.K.*]

258. 免費公開放映或播放廣播或有線傳播節目

(1) 如向任何觀眾或聽眾公開放映或播放任何廣播或有線傳播節目(不包括經編碼處理的廣播或有線傳播節目)，而該等觀眾或聽眾並沒有支付進入觀看或聆聽該廣播或節目的地方的入場費，則該項放映或播放並不屬侵犯——

- (a) 本部就包括在該項廣播或有線傳播節目內的表演或錄製品而賦予的權利；或
- (b) 本部就包括在藉接收該項廣播或有線傳播節目而公開播放或放映的任何聲音紀錄或影片內的表演或錄製品而賦予的權利。

(2) 如有以下情況，觀眾或聽眾可視為已支付進入某地方的入場費——

- (a) 該等觀眾或聽眾已支付進入某一地方的入場費，而該某地方構成該某地方的一部分；或
- (b) 在該某地方(或該某地方構成其一部分的地方)有貨品供應或服務提供，而該貨品或服務的價格——
 - (i) 實質上可歸因於提供觀看或聆聽該廣播或節目的設施；或

(ii) at prices exceeding those usually charged there and which are partly attributable to those facilities.

(3) The following are not regarded as having paid for admission to a place—

- (a) persons admitted as residents or inmates of the place which is operated by a charitable organization and the facilities therein are provided not for profit;
- (b) persons admitted as members of a club or society whose main objects are charitable or are otherwise concerned with the advancement of religion, education or social welfare and where the payment is only for membership of the club or society and the provision of facilities for seeing or hearing broadcasts or programmes is only incidental to the main purposes of the club or society.

(4) Where the making of the broadcast or inclusion of the programme in a cable programme service was an infringement of the rights conferred by this Part in relation to a performance or fixation, the fact that it was heard or seen in public by the reception of the broadcast or programme is to be taken into account in assessing the damages for that infringement.

(5) Expressions used in this section have the same meaning as in section 81.

[*cf. 1988 c. 48 Sch. 2 para. 18 U.K.*]

259. Reception and re-transmission of broadcast in cable programme service

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

- (a) a communal aerial broadcast distribution system within the scope of section 8(4)(e) of the Telecommunication Ordinance (Cap. 106);
- (b) an interconnection between a communal aerial broadcast distribution system within the scope of section 8(4)(e) of the Telecommunication Ordinance (Cap. 106) and a subscription television network licensed under the Television Ordinance (Cap. 52), where the re-transmission is for the reception of the users of the communal aerial broadcast distribution system; or
- (c) a system licensed under a broadcast relay station licence issued under the Telecommunication Regulations (Cap. 106 sub. leg.).

(ii) 高於通常在該地方收取的價格，並且可部分歸因於上述設施。

(3) 凡——

- (a) 某一地方是由慈善組織營辦的，而在其內所提供的設施並非為牟利的，則以該地方的居民或住客身分入場的人並不視為已支付進入該某一地方的入場費；
- (b) 某會社或社團的主要宗旨屬慈善性質，或是關於宣揚宗教，或推廣教育或社會福利的，而所支付的有關費用只是該會社或社團的會籍費用，且提供觀看或聆聽廣播或節目的設施，亦只是為該會社或社團的主要目的而附帶地提供的，則以該會社或社團的會員身分入場的人，並不視為已支付進入該某一地方的入場費。

(4) 凡作出該項廣播或將該節目包括在有線傳播節目服務內屬侵犯本部就任何表演或錄製品所賦予的權利，則在評估該項侵犯權利行為的損害賠償時，藉接收該項廣播或節目而使公眾聆聽或觀看該廣播或節目這一事實須列為考慮因素。

(5) 本條中所用詞句的涵義與第 81 條中該等詞句的涵義相同。

[*比照 1988 c. 48 Sch. 2 para. 18 U.K.*]

259. 接收和再傳送有線傳播節目服務的廣播

(1) 將表演或錄製品包括在電視廣播或聲音廣播內，而該廣播藉接收和在沒有作出更改的情況下即時再傳送而包括在以下系統或互相連接所提供的服務內，並不屬侵犯本部賦予的權利——

- (a) 在《電訊條例》(第 106 章) 第 8(4)(e) 條所指範圍內的公共天線廣播分配系統；
- (b) 在《電訊條例》(第 106 章) 第 8(4)(e) 條所指範圍內的公共天線廣播分配系統與根據《電視條例》(第 52 章) 領有牌照的收費電視網絡之間的互相連接，而該項再傳送的目的是供公共天線廣播分配系統的用戶接收；或
- (c) 領有根據《電訊規例》(第 106 章，附屬法例) 發出的廣播轉播電台牌照的系統。

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

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

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

(3) Where a television broadcast or sound broadcast is made or uplinked from a place in Hong Kong or elsewhere, and the broadcast is a lawful broadcast, then any person who, by the reception and immediate re-transmission of the broadcast without any alteration, includes a programme in a service provided by a system or an interconnection specified in subsection (1) or (2), being a programme comprising a performance, shall be in a like position, in any proceedings for infringement of the performer's right (if any) in the performance, as if he had been the holder of a licence granted by the performer to include the performance in any programme so included in that service.

(4) Notwithstanding subsections (1) and (2), where the making of the broadcast was in infringement of those rights, the fact that the broadcast was re-transmitted as a programme in a cable programme service is to be taken into account in assessing the damages for that infringement.

(5) Where a television broadcast or a sound broadcast is not encrypted, the person who, by the reception and immediate re-transmission of the broadcast without any alteration, includes a programme in a service provided by a system or interconnection specified in subsection (2) is deemed to have been granted an implied licence by the maker of the broadcast to receive and re-transmit the broadcast using the system which is only revocable by notice given in accordance with subsection (6).

(6) The maker of a broadcast in respect of which a licence is deemed to have been granted under subsection (5) may revoke the licence by publishing a notice of revocation in—

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

(2) 將表演或錄製品包括在某電視廣播或聲音廣播內，而該廣播是未經編碼處理並且是藉接收和在沒有作出更改的情況下即時再傳送而包括在以下系統或互相連接所提供的服務內，並不屬侵犯本部賦予的權利——

- (a) 領有根據《電訊規例》(第 106 章，附屬法例)發出的衛星電視共用天線牌照的系統；或
- (b) 在領有根據《電訊規例》(第 106 章，附屬法例)發出的衛星電視共用天線牌照的系統與根據《電視條例》(第 52 章)領有牌照的收費電視網絡之間的互相連接，而該項再傳送的目的是供衛星電視共用天線系統的用戶接收，

直至自按照第 (6) 款刊登通知當日起計的 6 個月屆滿為止。

(3) 凡某電視廣播或聲音廣播從香港或其他地方的某地方作出或作向上傳輸，而該廣播乃合法的廣播，則任何人因藉接收和即時再傳送沒有作出更改的該廣播而將任何節目(該節目須屬包含一項表演者)包括在藉第 (1) 或 (2) 款所指明的系統或互相連接所提供的服務內，則該人在任何關於侵犯該項表演的表演者權利(如有的話)的法律程序中的地位，猶如其為由表演者批出的將該項表演包括在任何已如此包括在該服務內的節目的特許的持有人一樣。

(4) 儘管有第 (1) 及 (2) 款的規定，凡廣播的製作屬侵犯該等權利，則在評估該項侵犯權利行為的損害賠償時，該廣播是作為有線傳播節目服務的節目而再傳送這一事實須列為考慮因素。

(5) 凡電視廣播或聲音廣播沒有經編碼處理，則任何人如藉接收和即時再傳送沒有作出更改的該廣播而將節目包括在藉第 (2) 款所指明的系統或互相連接所提供的服務內，該人即當作已獲該廣播的製作者批給隱含特許以使用該系統接收和再傳送該廣播，而該隱含特許只可藉按照第 (6) 款給予的通知撤銷。

(6) 根據第 (5) 款當作已批出特許的廣播的製作者可在——

- (a) 一份行銷於香港的中文報章；及
- (b) 一份行銷於香港的英文報章，

刊登撤銷通知而撤銷該特許。

(7) Expressions used in this section have the same meaning as in section 82.

[*cf. 1988 c. 48 Sch. 2 para. 19 U.K.*]

260. Provision of sub-titled copies of broadcast or cable programme

(1) A designated body may, for the purpose of providing people who are deaf or hard of hearing, or physically or mentally handicapped in other ways, with copies which are sub-titled or otherwise modified for their special needs, make recordings of television broadcasts or cable programmes without infringing any right conferred by this Part in relation to a performance or fixation included in the broadcast or cable programme.

(2) Recording is not authorized by this section if, or to the extent that, licences under licensing schemes are available authorizing the recording in question and the person making the recordings knew or ought to have been aware of that fact.

(3) In this section “designated body” (指定機構) means a body designated for the purposes of section 83 and other expressions used in this section have the same meaning as in that section.

[*cf. 1988 c. 48 Sch. 2 para. 20 U.K.*]

261. Recording of broadcast or cable programme for archival purposes

(1) A recording of a broadcast or cable programme of a designated class, or a copy of such a recording, may be made for the purpose of being placed in an archive maintained by a designated body without thereby infringing any right conferred by this Part in relation to a performance or fixation included in the broadcast or cable programme.

(2) In this section “designated class” (指定類別) and “designated body” (指定機構) mean a class and a body respectively designated for the purposes of section 84 and other expressions used in this section have the same meaning as in that section.

[*cf. 1988 c. 48 Sch. 2 para. 21 U.K.*]

(7) 本條中所用詞句的涵義與第 82 條中該等詞句的涵義相同。

[*比照 1988 c. 48 Sch. 2 para. 19 U.K.*]

260. 提供附有字幕的廣播或有線傳播節目的複製品

(1) 為了將附有字幕或在其他方面經變通以切合失聰或聽覺有問題的人或身體上或精神上有其他方面殘障的人的特殊需要的電視廣播或有線傳播節目的複製品提供予該等人士，任何指定機構均可製作該等電視廣播或有線傳播節目的紀錄而不屬侵犯本部就包括在廣播或有線傳播節目內的表演或錄製品賦予的任何權利。

(2) 如有特許計劃下的特許授權進行有關記錄，而製作紀錄的人已知道或應已知道該事實，則本條並不授權進行有關的記錄或在該特許所授權的範圍內進行有關的記錄。

(3) 在本條中，“指定機構”(designated body)指為施行第 83 條而指定的機構；而本條中所用的其他詞句的涵義與第 83 條中該等詞句的涵義相同。

[*比照 1988 c. 48 Sch. 2 para. 20 U.K.*]

261. 為存檔而製作廣播或有線傳播節目的紀錄

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

(2) 在本條中，“指定類別”(designated class)和“指定機構”(designated body)分別指為施行第 84 條而指定的類別及機構；而本條中所用的其他詞句的涵義與該條中該等詞句的涵義相同。

[*比照 1988 c. 48 Sch. 2 para. 21 U.K.*]

DIVISION III

第 III 分部

PROCEEDINGS RELATING TO IMPORTATION OF
INFRINGING FIXATIONS

關乎輸入侵犯權利的錄製品的法律程序

262. Definitions

In this Division—
 “detention order” (扣留令) means an order made under section 264(1);
 “right holder” (權利持有人) means—

- (a) the performer of a performance in which performer's rights subsist under this Part or the exclusive licensee of the performer's economic rights in such a performance; or
- (b) the person who has fixation rights in relation to the performance.

263. Application for detention order

(1) A right holder may apply to the High Court for an order under section 264(1) where he has reasonable grounds for suspecting that the importation of an article that constitutes an infringing fixation of the performance in respect of which he is a right holder may take place.

(2) An application under subsection (1) may be made ex parte but with previous notice to the Commissioner.

(3) An application under subsection (1) must be in such form as is prescribed by rules of court and must be supported by an affidavit of the right holder which—

- (a) states that at the time the application is made rights in performances subsist under this Part in the performance in question;
- (b) states whether the deponent is the owner or the exclusive licensee of the rights in performances conferred by this Part;
- (c) where the deponent purports to be the exclusive licensee, states the facts and exhibits such documents relied upon by the deponent to establish that he is the exclusive licensee;
- (d) states that a copy of the fixation of the performance exhibited to the affidavit is an authorized copy of the fixation;
- (e) states the grounds for the application, including the facts relied upon by the deponent as showing that the article in question is prima facie an infringing fixation;
- (f) sets out a sufficiently detailed description of the article in question to make it readily recognizable by the Commissioner;

262. 定義

在本分部中——

“扣留令” (detention order) 指根據第 264(1) 條作出的命令；

“權利持有人” (right holder) 指——

- (a) 根據本部有表演者權利存在的表演的表演者，或該等表演的表演者的經濟權利的專用特許持有人；或
- (b) 就該等表演有錄製權的人。

263. 扣留令的申請

(1) 凡就某表演而言屬權利持有人的人，有合理理由懷疑屬構成該表演的侵犯權利的錄製品的物品可能被輸入，則該權利持有人可向高等法院申請根據第 264(1) 條作出命令。

(2) 根據第 (1) 款提出的申請可以單方面提出，但須事先給予總監通知。

(3) 根據第 (1) 款提出的申請，必須採用法院規則訂明的格式，並須有權利持有人作出的誓章支持，而該誓章須——

- (a) 述明於提出申請時，有關的表演根據本部有在表演中的權利存在；
- (b) 述明宣誓人是本部賦予的在表演中的權利的擁有人或是該等權利的專用特許持有人；
- (c) (凡宣誓人宣稱是專用特許持有人) 述明宣誓人賴以證明他是專用特許持有人的事實，並附有宣誓人賴以證明他是專用特許持有人的文件作為證物；
- (d) 述明附於誓章作為證物的該表演的錄製品的複製品是該錄製品的獲授權複製品；
- (e) 述明提出申請的理由，包括宣誓人賴以顯示有關物品表面看來是侵犯權利的錄製品的事實；
- (f) 列出有關物品的足夠詳細說明，使總監可輕易辨認該物品；

- (g) sets out particulars regarding the expected mode of transportation and the expected date of importation and, if available, particulars identifying the importer; and
- (h) sets out such other information and exhibits such other documents as may be prescribed by rules of court.

(4) No application may be made under subsection (1) with respect to an article in transit.

(5) No application may be made under subsection (1) with respect to the importation by a person of an article for his private and domestic use.

(6) Section 121 applies in respect of an affidavit made in accordance with subsection (3) by the exclusive licensee of the performer's economic rights that subsist in a qualifying performance under this Part in the same manner as it would apply if the affidavit were made by the owner of those rights.

264. Issuance of detention order

(1) Where, on the hearing of an application made under section 263, the right holder presents adequate evidence to satisfy the High Court that the article in question is prima facie an infringing fixation, the High Court may make an order directing the Commissioner or an authorized officer to take reasonable measures to seize or detain the article on or after its importation.

(2) The High Court may require the right holder to provide security or an equivalent assurance in an amount sufficient to protect the importer and any other person having an interest in the article to be seized or detained, including the consignee and the owner of the article, from any loss or damage that may be incurred in the event that the seizure or detention is wrongful or the article is released to the importer under section 265(6).

(3) A detention order may contain such terms and conditions as the High Court considers appropriate.

(4) The High Court shall not make a detention order with respect to any article that has been seized or detained by, and that is in the custody of, the Commissioner or an authorized officer pursuant to any law.

(5) Where the Commissioner or an authorized officer seizes or detains an article pursuant to any law, other than this Division or Division VII of Part II, any detention order made with respect to that article ceases to have effect.

(6) Where the High Court makes a detention order, the right holder shall forthwith serve a copy of the order on the Commissioner.

(7) A detention order has effect from the date on which it is made or such later date as may be specified by the High Court and ceases to have effect 60 days from that date unless the Commissioner or an authorized officer has, pursuant to the order and within that period, seized or detained any article to which the order applies.

- (g) 列出預期採用的運輸工具的詳情及預期輸入的日期，以及識別輸入者的詳情(如有的話)；及
- (h) 列出法院規則所訂明的其他資料和附有法院規則訂明的其他文件作為證物。

(4) 任何人不得就過境物品而根據第(1)款提出申請。

(5) 如有任何人輸入任何物品供他私人和家居使用，則不得根據第(1)款就該輸入提出申請。

(6) 第121條適用於任何根據本部而存在於合資格表演的表演者的經濟權利的專用特許持有人按照第(3)款作出的誓章，而適用的方式與假使該誓章是由表演者的經濟權利的擁有人作出而該條即會適用的方式相同。

264. 扣留令的發出

(1) 凡有就根據第263條提出的申請而進行的聆訊，則如在進行該聆訊時權利持有人出示充分的證據，令高等法院信納有關物品表面看來是侵犯權利的錄製品，則高等法院可作出命令，指示總監或任何獲授權人員採取合理措施，於該物品輸入時或輸入後檢取或扣留該物品。

(2) 高等法院可規定權利持有人提供保證或任何相等的擔保，其款額須足以保障輸入者及對被檢取或扣留物品享有權益的任何其他人(包括該物品的收貨人及擁有人)在該項檢取或扣留如屬錯誤或該物品如根據第265(6)條發還輸入者時，可免受可能會招致的任何損失或損害。

(3) 扣留令可載有高等法院認為適當的條款及條件。

(4) 如任何物品已由總監或任何獲授權人員依據任何法律檢取或扣留，並正由其保管，則高等法院不得就該物品作出扣留令。

(5) 凡總監或任何獲授權人員依據本分部或第II部第VII分部以外的任何法律檢取或扣留任何物品，則就該物品而作出的任何扣留令即停止具有效力。

(6) 凡高等法院作出扣留令，則權利持有人須立即將該命令的副本一份送達總監。

(7) 扣留令由作出的日期或由高等法院指明的較後日期起具有效力，並須於從自該日期起計的60天屆滿時停止具有效力，但如總監或任何獲授權人員已依據該命令於該期間內檢取或扣留該命令適用的任何物品，則屬例外。

265. Enforcement of detention order

(1) Where a detention order is served on the Commissioner, the Commissioner or an authorized officer shall, subject to the terms and conditions of the order, seize or detain any article to which the order applies.

(2) The right holder shall—

- (a) supply to the Commissioner or an authorized officer sufficient information on the article and the particular importation to render the article recognizable and the shipment or particular importation identifiable and any other information the Commissioner or an authorized officer may reasonably require for the purpose of carrying out the detention order;
- (b) deposit with the Commissioner an amount that is, in the opinion of the Commissioner, sufficient to reimburse the Government for the costs likely to be incurred in connection with the carrying out of the detention order; and
- (c) upon notification in writing by the Commissioner or an authorized officer of the seizure or detention of the article, provide such storage space and other facilities as he may require.

(3) The Commissioner or an authorized officer may refuse to carry out the detention order if the right holder fails to comply with subsection (2).

(4) The Commissioner may, after giving written notice to the right holder, apply to the High Court for directions in carrying out the detention order, and the High Court may, after giving the right holder an opportunity to be heard, give such directions as it thinks fit.

(5) The Commissioner or an authorized officer shall forthwith after an article is seized or detained pursuant to a detention order, give written notice of the seizure or detention to—

- (a) the right holder;
- (b) the importer; and
- (c) any other person to whom notice is required to be given by the terms of the order.

(6) Subject to subsection (7) and to any law authorizing the Commissioner or an authorized officer to seize or detain articles, the Commissioner or an authorized officer shall release any article that has been seized or detained pursuant to a detention order to the importer if the right holder has not, within a period of 10 days after notice of the seizure or detention is given to the right holder, notified the Commissioner in writing that an action for infringement in respect of the article has been brought under this Part.

265. 扣留令的強制執行

(1) 凡某扣留令送達總監，則總監或任何獲授權人員須在該命令的條款及條件的規限下，檢取或扣留該命令適用的任何物品。

(2) 權利持有人須——

- (a) 向總監或任何獲授權人員提供關於該物品及有關輸入的充分資料，使該物品可以辨認和使付運的貨物或有關輸入可以識別，並提供總監或任何獲授權人員為執行該扣留令而可合理要求的任何其他資料；
- (b) 將一筆總監認為足以償付政府就執行該扣留令而相當可能招致的費用的款額存放於總監處；及
- (c) 在獲得總監或任何獲授權人員就將該物品被檢取或扣留一事以書面通知後，提供他要求的貯存空間及其他設施。

(3) 如權利持有人沒有遵從第(2)款，總監或任何獲授權人員可拒絕執行扣留令。

(4) 總監在給予權利持有人書面通知後，可向高等法院申請執行該扣留令的指示，而高等法院在給予權利持有人獲聆聽的機會後，可發出其認為合適的指示。

(5) 在任何物品依據扣留令被檢取或扣留後，總監或任何獲授權人員須立即將檢取或扣留一事以書面通知——

- (a) 有關權利持有人；
- (b) 有關輸入者；及
- (c) 該命令的條款規定須通知的任何其他人。

(6) 如權利持有人在獲給予有關檢取或扣留的通知後 10 天內，沒有以書面通知總監，謂關乎該物品的侵犯權利訟訴已根據本部提起，則除第(7)款及授權總監或任何獲授權人員檢取或扣留物品的任何法律另有規定外，總監或任何獲授權人員須將已依據扣留令被檢取或扣留的任何物品發還輸入者。

(7) The High Court may, on application by the right holder, after giving the Commissioner and each person to whom notice is required to be given under subsection (5) an opportunity to be heard, extend the period referred to in subsection (6) by a period not exceeding an additional 10 days if it is satisfied that the request for the extension is reasonable.

(8) In proceedings under subsection (7), the High Court may require the right holder to provide security or an equivalent assurance in addition to that provided in accordance with section 264(2).

(9) Where the right holder has, within the period referred to in subsection (6), as may be extended under subsection (7), notified the Commissioner in writing that an action for infringement in respect of the article has been brought under this Part, the Commissioner or an authorized officer shall retain custody of the article subject to the direction of the court in the infringement proceedings.

(10) No public holiday, gale warning day or black rainstorm warning day is reckoned in the computation of the period referred to in subsection (6), as may be extended under subsection (7).

(11) In this section—
 “black rainstorm warning day” (黑色暴雨警告日) means any day throughout or for part of which a black rainstorm warning is in force, and “black rainstorm warning” (黑色暴雨警告) means a warning issued by the Director of the Royal Observatory of a heavy rainstorm in, or in the vicinity of, Hong Kong by the use of the heavy rainstorm signal commonly referred to as Black;
 “gale warning day” (烈風警告日) means any day throughout or for part of which a gale warning is in force, and “gale warning” (烈風警告) has the meaning assigned to it by section 2 of the Judicial Proceedings (Adjournment During Gale Warnings) Ordinance (Cap. 62).

266. Variation or setting aside of detention order

(1) The Commissioner or the right holder may at any time apply to the High Court to vary the detention order.

(2) The importer or any other person affected by the detention order may at any time apply to the High Court to vary or set aside the order.

(3) A person who makes an application under subsection (1) or (2) shall give to the other parties such notice of the day fixed for the hearing of the application as a judge of the High Court may order.

(4) On the hearing of an application under subsection (1) or (2) to vary the detention order, the High Court may vary the order in such manner as it thinks just.

(7) 高等法院可應權利持有人提出的申請，在給予總監及根據第(5)款規定須予通知的每名人士獲聆聽的機會後，如信納延長第(6)款所提述的期間的請求合理，將該期間延長，但延長的期間以不超逾 10 天為限。

(8) 在根據第(7)款進行的法律程序中，高等法院可要求權利持有人除提供按照第 264(2) 條提供的保證或任何相等的擔保外，尚須提供額外的保證或任何相等的擔保。

(9) 凡權利持有人在第(6)款所提述的期間內(該期間或已根據第(7)款延長)，已經以書面通知總監，謂關乎該物品的侵犯權利訴訟已根據本部提起，則總監或任何獲授權人員須在侵犯權利法律程序中法院所作出的指示的規限下，繼續保管該物品。

(10) 在計算第(6)款所提述的期間(該期間或已根據第(7)款延長)時，任何公眾假期、烈風警告日或黑色暴雨警告日均不得計算在內。

(11) 在本條中——
 “黑色暴雨警告日”(black rainstorm warning day) 指全日或其中部分時間有黑色暴雨警告的日子，而“黑色暴雨警告”(black rainstorm warning) 指由天文台台長藉使用通常稱為黑色暴雨警告訊號的暴雨警告訊號而發出的關於在香港或香港附近有暴雨的警告；
 “烈風警告日”(gale warning day) 指全日或其中部分時間有烈風警告的日子，而“烈風警告”(gale warning) 具有《司法程序(烈風警告期間聆訊延期)條例》(第 62 章) 第 2 條給予該詞的涵義。

266. 扣留令的更改或推翻

(1) 總監或權利持有人可隨時向高等法院申請更改扣留令。

(2) 受扣留令影響的輸入者或任何其他人士可隨時向高等法院申請更改或推翻該命令。

(3) 根據第(1)或(2)款提出申請的人須將定出的聆訊該申請的日期，按高等法院大法官的命令通知其他各方。

(4) 高等法院在聆訊根據第(1)或(2)款提出更改扣留令的申請時，可以其認為公正的方式更改該命令。

(5) On the hearing of an application under subsection (2) to set aside the detention order, the High Court may set aside the order on such terms and conditions as it thinks just.

(6) For the purposes of subsection (3)—

- (a) the parties to an application under subsection (1) are the Commissioner, the right holder and, if the article in question has been seized or detained pursuant to the detention order, the importer and any other person to whom notice is required to be given under section 265(5); and
- (b) the parties to an application under subsection (2) are the Commissioner, the right holder, the applicant and the importer, if the importer is not the applicant.

267. Disclosure of information

(1) Where an article is seized or detained pursuant to a detention order, the Commissioner may disclose to the right holder—

- (a) the names and addresses of the importer, the consignor and the consignee;
- (b) the nature and quantity of articles seized or detained pursuant to the order;
- (c) any statement made to the Commissioner or an authorized officer by any person in connection with the seizure or detention, either with the prior consent in writing of that person or without such consent where the person is dead or cannot after reasonable enquiries by the Commissioner as to his whereabouts be found by the Commissioner; and
- (d) any other information or document relating to any article seized or detained pursuant to the order which the Commissioner thinks fit to disclose.

(2) Where the right holder seeks disclosure of—

- (a) any information or document that is not referred to in subsection (1); or
- (b) any information or document that is referred to in subsection (1) but which the Commissioner has not disclosed,

he may apply to the High Court for an order requiring the Commissioner to disclose such information or document and the High Court may on such an application make such order for disclosure as it deems fit.

(3) An application under subsection (2) may be begun by motion with previous notice to the Commissioner.

(5) 高等法院在聆訊根據第(2)款提出推翻扣留令的申請時，可在其認為公正的條款及條件下推翻該命令。

(6) 就第(3)款而言——

- (a) 根據第(1)款提出的申請的各方，指總監、權利持有人及(如有關物品已依據扣留令被檢取或扣留)輸入者，以及根據第265(5)條規定須予通知的任何其他人；及
- (b) 根據第(2)款提出的申請的各方，指總監、權利持有人、申請人及輸入者(如輸入者並非申請人)。

267. 資料的披露

(1) 凡有任何物品依據扣留令被檢取或扣留，則總監可向權利持有人披露——

- (a) 輸入者、付貨人及收貨人的姓名或名稱及地址；
- (b) 依據該命令檢取或扣留的物品的性質及數量；
- (c) 任何人就該項檢取或扣留而向總監或任何獲授權人員所作的任何陳述，但須事先得到該人的書面同意，如該人已死亡或總監在合理地查究該人的所在後仍未能找到該人，則不須事先得到該人的書面同意；及
- (d) 關乎依據該命令而被檢取或扣留的物品，並且是總監認為適宜披露的任何其他資料或文件。

(2) 凡權利持有人尋求披露——

- (a) 並沒有在第(1)款中提述的任何資料或文件；或
- (b) 在第(1)款中提述而總監並沒有披露的資料或文件，

該權利持有人即可向高等法院申請一項命令，規定總監披露該等資料或文件，而高等法院則可應該申請而作出其認為合適的命令以規定作出披露。

(3) 根據第(2)款提出的申請，可在事先給予總監通知的情況下藉動議而開始進行。

268. Inspection of articles, release of samples, etc.

(1) Where an article is seized or detained pursuant to a detention order, the Commissioner or an authorized officer shall—

- (a) give the right holder sufficient opportunity to inspect the article for the purpose of substantiating his claim; and
- (b) give the importer an equivalent opportunity to inspect the article for the purpose of refuting the right holder's claim.

(2) Where more than one article is seized or detained pursuant to a detention order, the Commissioner or an authorized officer may permit the right holder or the importer to remove samples of the seized or detained articles if the right holder or the importer, as the case may be, gives the Commissioner or authorized officer the requisite undertakings.

(3) For the purposes of subsection (2), the requisite undertakings are undertakings in writing that the person giving the undertaking will—

- (a) return the samples to the Commissioner or authorized officer at a specified time that is satisfactory to the Commissioner or authorized officer; and
- (b) take reasonable care to prevent unnecessary damage to the samples.

(4) If the Commissioner or an authorized officer permits the inspection of any seized or detained article, or the removal of a sample, by the right holder in accordance with this section, the Government is not liable to the importer for any loss or damage suffered by the importer arising out of—

- (a) damage to any article incurred during the inspection; or
- (b) anything done by the right holder or any other person to, or in relation to, a sample removed by the right holder or any use made by the right holder of such sample.

269. Costs payable

(1) The Commissioner may assess the costs incurred by the Government in connection with the carrying out of a detention order and may deduct those costs from the amount paid as a deposit by the right holder under section 265(2).

(2) Any costs assessed under subsection (1) shall be payable by the right holder to the Government and recoverable as a civil debt.

268. 檢查物品、發還樣本等

(1) 凡有任何物品依據扣留令被檢取或扣留，總監或任何獲授權人員須——

- (a) 給予權利持有人充分機會，為確立其申索而檢查該物品；及
- (b) 給予輸入者同等機會，為反駁權利持有人的申索而檢查該物品。

(2) 凡有多於一件物品依據扣留令被檢取或扣留，而權利持有人或輸入者（視屬何情況而定）給予總監或任何獲授權人員所需的承諾，則總監或該獲授權人員可允許權利持有人或輸入者移走被檢取或扣留的物品的樣本。

(3) 就第(2)款而言，所需的承諾指給予該承諾的人會作出以下事情的書面承諾——

- (a) 在總監或獲授權人員認為滿意的指明時間，將樣本交還總監或獲授權人員；及
- (b) 以合理謹慎防止對樣本造成不必要的損害。

(4) 如總監或任何獲授權人員允許權利持有人按照本條檢查任何已被檢取或扣留的物品，或移走任何樣本，則就由於以下所述而使輸入者蒙受的任何損失或損害而言，政府無須對輸入者負上任何法律責任——

- (a) 檢查時所招致對任何物品造成的損害；或
- (b) 權利持有人或任何其他人士對權利持有人移走的任何樣本作出的任何事情或就該樣本作出的任何事情，或權利持有人對該樣本作出的任何使用。

269. 須繳付的費用

(1) 總監可評定政府就扣留令的執行而招致的費用，並可從權利持有人根據第265(2)條繳付作為按金的款額中扣除該等費用。

(2) 根據第(1)款評定的任何費用，須由權利持有人向政府繳付，並可作為民事債項追討。

270. Compensation payable to importer, etc.

(1) Where an article is seized or detained pursuant to a detention order and the article is released pursuant to section 265(6), the importer, the consignee or the owner of the article may, within 6 months after the date on which the order is made, apply to the High Court for compensation for any loss or damage suffered by him by reason of the seizure or detention.

(2) Where—

- (a) an article is seized or detained pursuant to a detention order;
- (b) an action for infringement is brought under this Part in respect of the article within the period referred to in section 265(6), as may be extended under section 265(7); and
- (c) the action is discontinued, the claim of infringement is withdrawn or the court in the infringement proceedings determines that the infringement is not proved,

the importer, the consignee or the owner of the article may, within 6 months after the date on which the action is discontinued, the claim is withdrawn or the court renders its determination, as the case may be, apply to the High Court for compensation for any loss or damage suffered by him by reason of the seizure or detention.

(3) On an application under subsection (1) or (2), the High Court may make such order for compensation as it deems fit.

271. Rules

The power to make rules of court under section 54 of the Supreme Court Ordinance (Cap. 4) includes power to make rules of court regulating and prescribing the procedure and the practice to be followed in the High Court under this Division, and any matter incidental to or relating to that procedure or practice, including rules prescribing any matter or thing that under this Division is to be or may be prescribed by rules of court.

272. Protection of Commissioner and authorized officers

(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 in good faith in connection with the carrying out of a detention order.

(2) The protection conferred by subsection (1) on the Commissioner and authorized officers in respect of any action taken or omitted to be taken in good faith in connection with the carrying out of those duties shall not affect in any manner any liability of the Government for that action taken or omitted to be taken.

270. 須付予輸入者等的補償

(1) 凡有任何物品依據任何扣留令被檢取或扣留，而該物品又依據第 265(6) 條予以發還，則該物品的輸入者、收貨人或擁有人可於該命令作出的日期後 6 個月內，向高等法院申請因該項檢取或扣留而使他蒙受的任何損失或損害的補償。

(2) 凡——

- (a) 有任何物品依據扣留令被檢取或扣留；
- (b) 任何侵犯權利訴訟在第 265(6) 條所提述的期間內（該期間可根據第 265(7) 條延長），根據本部就該物品而提起；及
- (c) 該宗訴訟中止、侵犯權利的申索被撤回，或法院在侵犯權利法律程序中裁定該項侵犯權利並沒有獲得證明，

則該物品的輸入者、收貨人或擁有人可在該宗訴訟中止，該項申索被撤回或法院作出裁定（視屬何情況而定）的日期後 6 個月內，向高等法院申請因該項檢取或扣留而使他蒙受的任何損失或損害的補償。

(3) 高等法院可應根據第 (1) 或 (2) 款提出的申請，作出其認為合適的補償令。

271. 規則

根據《最高法院條例》(第 4 章) 第 54 條訂立法院規則的權力，包括就規管和訂明根據本分部在高等法院須遵守的程序及常規以及該等程序或常規的任何附帶或有關事宜訂立法院規則（包括訂立訂明任何根據本分部須由或可由法院規則訂明的事宜或事情的規則）的權力。

272. 總監及獲授權人員的保障

(1) 總監及獲授權人員無須對就扣留令的執行而真誠地採取或真誠地遺漏採取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。

(2) 如有就上述職責的執行而真誠地採取或真誠地遺漏採取的任何行動，則第 (1) 款就該行動而賦予總監及獲授權人員的保障，並不以任何方式影響政府須為所採取或遺漏採取的行動所負上的任何法律責任。

PART IV

TECHNOLOGICAL MEASURES AND GENERAL

Devices designed to circumvent copy-protection

273. Devices designed to circumvent copy-protection

(1) This section applies where—

- (a) copies of a copyright work are issued or made available to the public; or
- (b) an unfixed performance is made available to the public or copies of a fixation of a performance are issued or made available to the public,

by or with the licence of the copyright owner, the performer or the person having fixation rights in relation to the performance, as may be appropriate, in any form which is copy-protected.

(2) The person issuing or making available the copies or the unfixed performance to the public has the same rights and remedies against a person who, knowing or having reason to believe that it will be used to make infringing copies or infringing fixations—

- (a) makes, imports, exports, sells or lets for hire, offers or exposes for sale or hire, advertises for sale or hire, or possesses for the purpose of trade or business, any device or means specifically designed or adapted to circumvent the form of copy-protection employed; or
- (b) publishes information intended to enable or assist persons to circumvent that form of copy-protection,

as a copyright owner has in respect of an infringement of copyright.

(3) Further, the person issuing or making available the copies or the unfixed performance to the public has the same rights and remedies under section 109 (delivery up) in relation to any such device or means which a person has in his possession, custody or control with the intention that it should be used to make infringing copies of copyright works or infringing fixations of performances, as a copyright owner has in relation to an infringing copy.

(4) References in this section to copy-protection include any device or means specifically intended to prevent or restrict copying of a work or fixation of a performance or to impair the quality of copies or fixations made.

第 IV 部

科技措施及一般條文

為規避防止複製的保護措施而設計的器件

273. 為規避防止複製的保護措施而設計的器件

(1) 凡版權擁有人、表演者或就表演具有錄製權的人，或在版權擁有人、表演者或就表演具有錄製權的人的特許下（視何者適用而定），以採用任何防止複製的保護措施的形式——

- (a) 向公眾發放或向公眾提供版權作品的複製品；或
- (b) 向公眾提供非錄製表演或向公眾發放或向公眾提供表演的錄製品的複製品，

則本條適用。

(2) 任何人如——

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

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

(3) 此外，如有人管有、保管或控制任何該等器件或設施，而其意圖是該等器件或設施應該用於製作版權作品的侵犯版權複製品或表演的侵犯權利的錄製品，則向公眾發放或向公眾提供該等複製品或非錄製表演的人根據第 109 條（交付）而就該等器件或設施所具有的權利及補救，與版權擁有人就侵犯版權複製品而具有的相同。

(4) 在本條中，凡提述防止複製的保護措施，即包括特定擬防止或限制複製某作品或錄製某項表演或使所製作的複製品或錄製品的質量受損的器件或設施。

(5) Sections 115 to 117 (presumptions as to certain matters relating to copyright) apply in relation to proceedings under this section as they do in relation to proceedings under Part II (copyright), and section 111 applies, with the necessary modifications, in relation to the disposal of anything delivered up by virtue of subsection (3).

[*cf.* 1988 c. 48 s. 296 U.K.]

Rights management information

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

(1) A person who provides rights management information is entitled to the following rights and remedies.

(2) He has the same rights and remedies against a person who—

- (a) removes or alters any electronic rights management information provided by him without his authority; or
- (b) issues or makes available to the public, sells or lets for hire, imports into or exports from Hong Kong, broadcasts or includes in a cable programme service, without his authority, works or copies of works, performances, fixations of performances to which the electronic rights management information is attached knowing that the electronic rights management information has been removed or altered without his authority,

as a copyright owner has in respect of an infringement of copyright.

(3) References in this section to rights management information means—

- (a) information which identifies the work, the author of the work, the owner of any right in the work, the performer, or the performance of the performer;
- (b) information about the terms and conditions of use of the work, the person having fixation rights in relation to the performance, or the performance; or
- (c) any numbers or codes that represent such information,

when any of these items of information is attached to a copy of a work or a fixed performance or appears in connection with the making available of a work or a fixed performance to the public.

(5) 第 115 至 117 條(就某些關乎版權的事宜所作的推定)就根據本條進行的法律程序而適用，一如其就根據第 II 部(版權)進行的法律程序而適用一樣，而第 111 條經所需的變通後，就任何憑藉第 (3) 款交付的東西的處置而適用。

[*比照* 1988 c. 48. s. 296 U.K.]

權利管理資料

274. 就干擾權利管理資料的不合法作為而具有的權利及補救

(1) 提供權利管理資料的人具有以下的權利及補救。

(2) 他針對作出以下事情的人而具有的權利和補救，與版權擁有人就侵犯版權而具有的相同——

- (a) 在未經他授權下除去或更改由他提供的電子形式的權利管理資料；或
- (b) 知道有附連於作品或其複製品、表演、表演的錄製品的電子形式的權利管理資料在未經他授權下已被除去或更改，而在未經他授權下向公眾發放或向公眾提供、出售或出租該等作品或其複製品、表演或表演的錄製品，或將之輸入或輸出香港、廣播或包括在有線傳播節目服務內。

(3) 在本條中，凡提述權利管理資料，即指在附連於任何作品的複製品或錄製表演時的屬以下任何項目的資料，或與向公眾提供作品或錄製表演有關而出現的屬以下任何項目的資料——

- (a) 識別作品、作品的作者、作品的任何權利的擁有人、表演者或表演者的表演的資料；
- (b) 關於使用作品的條款及條件、就表演具有錄製權的人或表演的資料；或
- (c) 任何代表該等資料的數字或代碼。

Fraudulent reception of transmissions**以欺詐手段接收傳送****275. Rights and remedies in respect of apparatus, etc. for unauthorized reception of transmissions****275. 就用作在未經授權下接收傳送的器具等而具有的權利和補救**

- (1) A person who—
- (a) makes charges for the reception of programmes included in a broadcasting or cable programme service provided from a place in Hong Kong or elsewhere; or
 - (b) sends encrypted transmissions of any other description from a place in Hong Kong or elsewhere,
- is entitled to the following rights and remedies.
- (2) He has the same rights and remedies against a person who—
- (a) makes, imports, exports or sells or lets for hire any apparatus or device designed or adapted to enable or assist persons to receive the programmes or other transmissions when they are not entitled to do so; or
 - (b) publishes any information which is calculated to enable or assist persons to receive the programmes or other transmissions when they are not entitled to do so,

- (1) 凡任何人——
- (a) 為接收包括在從香港某地方或從其他地方提供的廣播或有線傳播節目服務內的節目而收取費用；或
 - (b) 從香港某地方或從其他地方發送任何其他類別的經編碼處理的傳送，
- 該人即具有以下權利及補救。

(2) 他針對作出以下作為的人而具有的權利和補救，與版權擁有人就侵犯版權而具有的相同——

- (a) 製作、輸入、輸出、出售或出租任何器具或器件，而該器具或器件是經設計或改裝以使他人能夠接收或協助他人接收該等人無權接收的節目或其他傳送的；或
- (b) 發表任何資料而該資料刻意使他人能夠接收或刻意協助他人接收該等人無權接收的節目或其他傳送。

(3) 此外，他根據第 109 條 (交付) 而就任何該等器具或器件所具有的權利和補救，與版權擁有人就侵犯版權複製品而具有的相同。

(4) 在第 108(1) 條 (不知情侵犯版權) 適用於就侵犯本條所賦予權利而進行的法律程序的條文中，凡提述被告人不知道或沒有理由相信某作品有版權存在，須解釋為提述他不知道或沒有理由相信其作為侵犯了本條所賦予的權利。

(5) 第 111 條經所需的變通後，就任何憑藉第 (3) 款交付的東西的處置而適用。

[*比照 1988 c. 48 s. 298 U.K.*]

as a copyright owner has in respect of an infringement of copyright.

(3) Further, he has the same rights and remedies under section 109 (delivery up) in relation to any such apparatus or device as a copyright owner has in relation to an infringing copy.

(4) In section 108(1) (innocent infringement of copyright) as it applies to proceedings for infringement of the rights conferred by this section, the reference to the defendant not knowing or having reason to believe that copyright subsisted in the work is construed as a reference to his not knowing or having reason to believe that his acts infringed the rights conferred by this section.

(5) Section 111 applies, with the necessary modifications, in relation to the disposal of anything delivered up by virtue of subsection (3).

[*cf. 1988 c. 48 s. 298 U.K.*]

276. Denial of rights under section 275 to people of countries, etc. not giving adequate protection to Hong Kong broadcasts, cable programmes and encrypted transmissions**276. 對於某些不給予香港的廣播、有線傳播節目及經編碼處理的傳送足夠保護的國家等的人民不給予第 275 條所指的權利**

(1) Subject to subsection (3), if it appears to the Governor in Council that broadcasts made or cable programmes or encrypted transmissions sent from

(1) 除第 (3) 款另有規定外，總督會同行政局如覺得在香港製作的廣播或從香港發送的有線傳播節目或經編碼處理的傳送因受到某國家、地區或地方不利的待遇而在

Hong Kong are not adequately protected in a country, territory or area as a result of any prejudicial treatment given to those broadcasts, cable programmes or transmissions by that country, territory or area, the Governor in Council may by regulation in accordance with this section restrict the rights conferred by section 275 in relation to broadcasters or providers of cable programme services or encrypted transmissions of that country, territory or area.

(2) The Governor in Council shall designate in the regulation the country, territory or area concerned and provide that, for the purposes specified in the regulation, a broadcast made or a cable programme or encrypted transmission sent after a date specified in the regulation does not qualify for protection conferred by section 275 if at the time of that making or sending the maker or sender is—

- (a) an individual domiciled or resident or having a right of abode in that country, territory or area (and not at the same time domiciled or resident or having a right of abode in Hong Kong); or
- (b) a body incorporated under the law of that country, territory or area,

and the regulation may make such provision for all the purposes of section 275 or for such purposes as are specified in the regulation, and either generally or in relation to such class of cases as are specified in the regulation, having regard to the nature and extent of that prejudicial treatment referred to in subsection (1).

(3) The Governor in Council shall not exercise his power under this section in relation to a country, territory or area which is a party to a bilateral or multilateral copyright or related right convention to which Hong Kong is also a party or the application of which has been extended to Hong Kong.

277. Supplementary provisions as to fraudulent reception

Where section 275 applies in relation to a broadcasting service or cable programme service, it also applies to any service run for the person providing that service, or a person providing programmes for that service, which consists wholly or mainly in the sending by means of a telecommunications system of sounds or visual images, or both.

[*cf.* 1988 c. 48 s. 299 U.K.]

General

278. Commissioner may authorize officers

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

該國家、地區或地方沒有得到足夠的保護，則總督會同行政局可藉規例而按照本條，限制第 275 條就該國家、地區或地方製作廣播或提供有線傳播節目或經編碼處理的傳送的人而賦予的權利。

(2) 總督會同行政局須在規例中指定有關的國家、地區或地方，並須規定就規例所指明的目的而言，在規例所指明的日期之後製作的廣播或發送的有線傳播節目或經編碼處理的傳送的製作者或發送者在該項製作或發送時屬下列身分，則該項廣播、有線傳播節目或經編碼處理的傳送並不具備根據第 275 條獲得保護的資格——

- (a) 製作者或發送者是以該國家、地區或地方為居籍或在該國家、地區或地方居住或有該國家、地區或地方的居留權 (但並非同時以香港為居籍或在香港居住或有香港的居留權) 的個人；或

(b) 製作者或發送者是根據該國家、地區或地方的法律成立為法團的團體，而規例可在顧及第 (1) 款所提述的不利待遇的性質及程度後，為第 275 條的全部目的或為規例所指明的某些目的，一般地或就規例所指明的個案種類，訂定條文。

(3) 總督會同行政局不得就香港亦是締約方或延伸適用於香港的雙邊或多邊版權或有關權利的公約的締約國家、地區或地方行使其在本條下的權力。

277. 關於以欺詐手段接收的補充條文

凡第 275 條就某廣播服務或有線傳播節目服務而適用，則該條亦適用於為提供該等服務的人或提供節目予該等服務的人而營運的任何服務，而該等服務全部或主要是藉電訊系統發送聲音或影像或發送聲音及影像的。

[*比照* 1988 c. 48 s. 299 U.K.]

一般條文

278. 總監可授權予任何人員

總監可授權任何公職人員行使本條例賦予獲授權人員的任何權力和執行本條例委予獲授權人員的任何職責。

279. Interpretation

Expressions used in this Part which are defined for the purposes of Parts II (copyright) and III (rights in performances) have the same meaning as in those Parts.

280. Consequential amendments

The enactments specified in Schedule 4 are amended in accordance with that Schedule, the amendments being consequential on the provisions of this Ordinance.

281. Repeals

The enactments specified in Schedule 5 are repealed to the extent specified.

SCHEDULE 1

[s. 195 & Schs. 2 & 3]

EDUCATIONAL ESTABLISHMENTS

1. Any school, within the meaning of section 3 of the Education Ordinance (Cap. 279), entirely maintained and controlled by the Government.
2. Any school which is registered or provisionally registered under the Education Ordinance (Cap. 279).
3. Any post secondary college registered under the Post Secondary Colleges Ordinance (Cap. 320).
4. Lingnan College as incorporated by the Lingnan College Ordinance (Cap. 422).
5. The Hong Kong Institute of Education established by The Hong Kong Institute of Education Ordinance (Cap. 444).
6. University of Hong Kong established by the University of Hong Kong Ordinance (Cap. 1053).
7. The Hong Kong Polytechnic University established by The Hong Kong Polytechnic University Ordinance (Cap. 1075).
8. The Chinese University of Hong Kong established by The Chinese University of Hong Kong Ordinance (Cap. 1109).
9. Hong Kong Baptist University established by the Hong Kong Baptist University Ordinance (Cap. 1126).
10. Any industrial training centre or skills centre defined in section 2 of the Vocational Training Council Ordinance (Cap. 1130).
11. Any technical college or technical institute defined in section 2 of the Vocational Training Council Ordinance (Cap. 1130).
12. City University of Hong Kong established by the City University of Hong Kong Ordinance (Cap. 1132).
13. The Hong Kong Academy for Performing Arts established by The Hong Kong Academy for Performing Arts Ordinance (Cap. 1135).

279. 釋義

在本部中使用的詞句，如已為第 II 部 (版權) 及第 III 部 (表演的權利) 的施行而予以界定，則其涵義與在該兩部中該等詞句的涵義相同。

280. 相應修訂

附表 4 指明的成文法則按照該附表予以修訂，而該等修訂是就本條例的條文相應作出的。

281. 廢除

附表 5 指明的成文法則就該附表所指明的範圍予以廢除。

附表 1

[第 195 條及附表 2 及 3]

教育機構

1. 《教育條例》(第 279 章) 第 3 條所指並完全由政府營辦和管制的任何學校。
2. 根據《教育條例》(第 279 章) 註冊或臨時註冊的任何學校。
3. 根據《專上學院條例》(第 320 章) 註冊的任何專上學院。
4. 根據《嶺南學院條例》(第 422 章) 成立的嶺南學院。
5. 根據《香港教育學院條例》(第 444 章) 設立的香港教育學院。
6. 根據《香港大學條例》(第 1053 章) 設立的香港大學。
7. 根據《香港理工大學條例》(第 1075 章) 設立的香港理工大學。
8. 根據《香港中文大學條例》(第 1109 章) 設立的香港中文大學。
9. 根據《香港浸會大學條例》(第 1126 章) 設立的香港浸會大學。
10. 《職業訓練局條例》(第 1130 章) 第 2 條中界定的任何工業訓練中心或技能訓練中心。
11. 《職業訓練局條例》(第 1130 章) 第 2 條中界定的任何科技學院或工業學院。
12. 根據《香港城市大學條例》(第 1132 章) 設立的香港城市大學。
13. 根據《香港演藝學院條例》(第 1135 章) 設立的香港演藝學院。

14. The Hong Kong University of Science and Technology established by The Hong Kong University of Science and Technology Ordinance (Cap. 1141).
15. The Open Learning Institute of Hong Kong established by The Open Learning Institute of Hong Kong Ordinance (Cap. 1145).

14. 根據《香港科技大學條例》(第 1141 章) 設立的香港科技大學。
15. 根據《香港公開進修學院條例》(第 1145 章) 設立的香港公開進修學院。

SCHEDULE 2

[ss. 173, 191 & 199]

COPYRIGHT: TRANSITIONAL PROVISIONS AND SAVINGS

Introductory

1. (1) In this Schedule—
 “the 1911 Act” (1911 年法令) means the Copyright Act 1911 (1911 c. 46 U.K.) as extended to Hong Kong by Proclamation No. 3 of 1912 published in the Gazette of 28 June 1912;
 “the 1956 Act” (1956 年法令) means the Copyright Act 1956 (1956 c. 74 U.K.) as extended to Hong Kong by the Copyright (Hong Kong) Orders 1972 to 1990 (App. III, p. DD1);
 “the Copyright Ordinance” (版權條例) means the Copyright Ordinance (Cap. 39) in force immediately before the commencement of Part II of this Ordinance;
 “the new copyright provisions” (新的版權條文) means the provisions of this Ordinance relating to copyright, that is, Part II (including this Schedule and Schedule 1) and Schedules 4 and 5 so far as they make amendments or repeals consequential on the provisions of Part II;
 “the WTO Ordinance” (世界貿易組織條例) means the Intellectual Property (World Trade Organization Amendments) Ordinance 1996 (11 of 1996).
- (2) References in this Schedule to “commencement”, without more, are to the date on which this Ordinance (other than the provisions specified in section 1(2) of this Ordinance) comes into force.
- (3) References in this Schedule to “existing works” are to works made before commencement; and for this purpose a work of which the making extended over a period is to be taken to have been made when its making was completed.

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

2. (1) In relation to the 1956 Act, references in this Schedule to a work include any work or other subject-matter within the meaning of that Act.

(2) In relation to the 1911 Act—

- (a) references in this Schedule to “copyright” include the right conferred by section 24 of that Act in substitution for a right subsisting immediately before the commencement of that Act;
- (b) references in this Schedule to “copyright in a sound recording” are to the copyright under that Act in records embodying the recording; and
- (c) references in this Schedule to “copyright in a film” are to any copyright under that Act in the film (so far as it constituted a dramatic work for the purposes of that Act) or in photographs forming part of the film.

[cf. 1988 c. 48 Sch. 1 para. 2 U.K.]

General principles: continuity of the law

3. The new copyright provisions apply in relation to things existing at commencement as they apply in relation to things coming into existence after commencement, subject to any express provision to the contrary.

[cf. 1988 c. 48 Sch. 1 para. 3 U.K.]

4. (1) The provisions of this paragraph have effect for securing the continuity of the law so far as the new copyright provisions re-enact (with or without modification) earlier provisions.

附表 2

[第 173、191 及 199 條]

版權：過渡性及保留條文

引言

1. (1) 在本附表中——
 “《1911 年法令》” (the 1911 Act) 指藉在 1912 年 6 月 28 日的憲報刊登的 1912 年第 3 號文告而延伸適用於香港的《1911 年版權法令》(1911 c. 46 U.K.)；
 “《1956 年法令》” (the 1956 Act) 指藉《1972 年至 1990 年的版權 (香港) 命令》(附錄 III DD1 頁) 而延伸適用於香港的《1956 年版權法令》(1956 c. 74 U.K.)；
 “《世界貿易組織條例》” (the WTO Ordinance) 指《1996 年知識產權 (世界貿易組織修訂) 條例》(1996 年第 11 號)；
 “《版權條例》” (the Copyright Ordinance) 指在緊接本條例第 II 部的生效日期之前有效的《版權條例》(第 39 章)；
 “新的版權條文” (the new copyright provisions) 指關乎版權的本條例條文，即第 II 部 (包括本附表及附表 1) 及就第 II 部的條文而作出相應修訂或廢除的附表 4 及 5。
- (2) 在本附表中，凡僅提述“生效”，即提述本條例 (但本條例第 1(2) 條指明的條文除外) 的生效日期。
- (3) 在本附表中，凡提述“現存的作品”，即提述在生效之前製作的作品；就此而言，凡某作品的製作歷時一段期間，當該作品的製作完成時，須視為已製作該作品。

[比照 1988 c. 48 Sch. 1 para. 1 U.K.]

2. (1) 就《1956 年法令》而言，在本附表中，凡提述作品，即提述包括該法令所指的任何作品或其他標的物。

(2) 就《1911 年法令》而言——

- (a) 在本附表中，凡提述“版權”，即包括用以取代在緊接該法令生效之前存在的權利的該法令第 24 條所賦予的權利；
- (b) 在本附表中，凡提述“聲音紀錄的版權”，即提述收錄該聲音紀錄的紀錄在該法令下的版權；及
- (c) 在本附表中，凡提述“影片的版權”，即提述在構成該法令所指的戲劇作品的範圍內的影片在該法令下的任何版權或構成該影片一部分的照片在該法令下的任何版權。

[比照 1988 c. 48 Sch. 1 para. 2 U.K.]

一般原則：法律的延續

3. 除任何明訂的條文有相反規定外，新的版權條文就在生效時存在的東西而適用，一如其就在生效之後方存在的東西而適用一樣。

[比照 1988 c. 48 Sch. 1 para. 3 U.K.]

4. (1) 在新的版權條文重新制定 (不論有或沒有作出變通) 較早時的條文的範圍內，本段條文具有確使法律延續的效力。

(2) A reference in an enactment, instrument or other document to copyright, or to a work or other subject-matter in which copyright subsists, which apart from this Ordinance would be construed as referring to copyright under the 1956 Act is to be construed, so far as may be required for continuing its effect, as being, or as the case may require, including, a reference to copyright under this Ordinance or to works in which copyright subsists under this Ordinance.

(3) Anything done (including subsidiary legislation made), or having effect as done, under or for the purposes of a provision repealed by this Ordinance has effect as if done under or for the purposes of the corresponding provision of the new copyright provisions.

(4) References (expressed or implied) in this Ordinance or any other enactment, instrument or document to any of the new copyright provisions are, so far as the context permits, to be construed as including, in relation to times, circumstances and purposes before commencement, a reference to corresponding earlier provisions.

(5) A reference (expressed or implied) in an enactment, instrument or other document to a provision repealed by this Ordinance is to be construed, so far as may be required for continuing its effect, as a reference to the corresponding provision of this Ordinance.

(6) The provisions of this paragraph have effect subject to any specific transitional provision or saving and to any express amendment made by this Ordinance.

[cf. 1988 c. 48 Sch. 1 para. 4 U.K.]

Subsistence of copyright: general

5. (1) Copyright subsists in an existing work after commencement if copyright subsisted in it immediately before commencement.

(2) Copyright subsists in an existing work after commencement if—

(a) it would qualify for copyright protection under section 177 or 188 of this Ordinance—

(i) had it been made after commencement;

(ii) had it been published after commencement; or

(iii) in the case of a broadcast or cable programme, had it been made or sent after commencement; and

(b) copyright under the 1956 Act in the work would not have expired had copyright subsisted in it under that Act.

(3) Copyright in an existing work qualifying for copyright protection under subparagraph (2) expires at the time when copyright in the work would expire under the following provisions had copyright subsisted in it immediately before commencement.

Contrary rights

6. Where any person has before commencement incurred any significant expenditure or liability in connection with the reproduction or performance of a work or other subject-matter in a manner that at the time was lawful, or for the purpose of or with a view to the reproduction or performance of a work at a time when it would have been lawful but for the commencement, nothing in this Ordinance diminishes or prejudices any right or interest arising from or in connection with such action that is subsisting and valuable immediately before commencement unless the person who by virtue of paragraph 5(2) becomes entitled to restrain the reproduction or performances agrees to pay such compensation as the parties agree, or failing such agreement, as the Copyright Tribunal may determine.

Subsistence of copyright: films, broadcasts and cable programmes

7. (1) No copyright subsists in a film, as such, made before 12 December 1972.

(2) Where a film made before that date was an original dramatic work within the meaning of the 1911 Act, the new copyright provisions have effect in relation to the film as if it was an original dramatic work within the meaning of Part II.

(2) 在成文法則、文書或其他文件中，在凡提述版權或有版權存在的作品或其他標的物，若非因本條例便會解釋為提述《1956年法令》所指的版權的情況下，在延續該成文法則、文書或其他文件的效力所需的範圍內須解釋為提述（或按個別情況的需要而須解釋為包括）本條例所指的版權或根據本條例而有版權存在的作品。

(3) 凡根據被本條例廢除的條文或為施行該條文而作出任何事情（包括訂立附屬法例），或凡任何事情具有如此作出的效力，則該等事情在其是根據相應的新的版權條文而作出或為施行相應的新的版權條文而作出一樣的情況下，具有效力。

(4) 在文意許可的情況下，在本條例或任何其他成文法則、文書或文件中，凡提述（明示或隱含）新的版權條文的任何條文，即就生效之前的時間、情況及目的而解釋為包括提述相應的較早時的條文。

(5) 在任何成文法則、文書或其他文件中，凡提述（明示或隱含）被本條例廢除的條文，在延續該成文法則、文書或其他文件的效力所需的範圍內，該提述須解釋為提述本條例的相應條文。

(6) 本段條文在任何特定的過渡性條文或保留條文及本條例作出的任何明示修訂的規限下具有效力。

[比照 1988 c. 48 Sch. 1 para. 4 U.K.]

版權的存在：一般條文

5. (1) 如版權在緊接生效之前存在於現存的作品，則版權亦在生效之後存在於該作品。

(2) 如符合以下說明，則版權在生效之後存在於現存的作品——

(a) 假使——

(i) 該作品是在生效之後製作的；

(ii) 該作品是在生效之後發表的；或

(iii) 該作品屬廣播或有線傳播節目並是在生效之後製作或發送的，則該作品便會根據第 177 或 188 條具備享有版權保護的資格；及

(b) 假使版權根據《1956年法令》而存在於該作品，則該作品在《1956年法令》下的版權便不會屆滿。

(3) 假使版權在緊接生效之前存在於現存的作品，則在該作品的版權根據以下條文會屆滿的時候，該作品的根據第(2)節具備享有版權保護資格的版權亦告屆滿。

反對的權利

6. 凡任何人在生效之前，就任何作品或其他標的物的複製或表演而招致大量開支或法律責任，而招致的方式在當時是合法的，又或任何人在生效之前，為上述複製或表演的目的或為達致上述複製或表演而招致大量開支或法律責任，而在當時，若非因生效該複製或表演本會是合法的，則本條例既不削減亦不損害任何因上述行動而產生的或與上述行動相關的任何權利或權益，但該權利或權益須在緊接生效前已存在兼有價值；但如憑藉第 5(2) 段而有權限制複製或表演的人同意支付補償（數額由雙方協議，如無協議，則由版權審裁處裁定），則屬例外。

版權的存在：影片、廣播及有線傳播節目

7. (1) 版權並不存在於 1972 年 12 月 12 日之前製作的影片。

(2) 如在該日期之前製作的影片是《1911年法令》所指的原創的戲劇作品，則新的版權條文就該影片具有效力，猶如該影片是第 II 部所指的原創的戲劇作品一樣。

(3) The new copyright provisions have effect in relation to photographs forming part of a film made before 12 December 1972 as they have effect in relation to photographs not forming part of a film.

(4) In relation to a film in which copyright does not or did not subsist as such but which is or was protected—

(a) as an original dramatic works; or

(b) by virtue of the protection of the photographs forming part of the film,

references in the new copyright provisions, and in this Schedule, to copyright in a film are to any copyright in the film as an original dramatic work or, as the case may be, in photographs forming part of the film.

[*cf.* 1988 c. 48 Sch. 1 para. 7 U.K.]

8. No copyright subsists in—

(a) a broadcast made before 12 December 1972; or

(b) a cable programme included in a cable programme service before 11 March 1994, and any such broadcast or cable programme is to be disregarded for the purposes of section 20(3) of this Ordinance (duration of copyright in repeats).

[*cf.* 1988 c. 48 Sch. 1 para. 9 U.K.]

Authorship of work

9. The question who was the author of an existing work is to be determined in accordance with the new copyright provisions for the purposes of the rights conferred by Division IV of Part II (moral rights), and for all other purposes is to be determined in accordance with the law in force at the time the work was made.

[*cf.* 1988 c. 48 Sch. 1 para. 10 U.K.]

First ownership of copyright

10. (1) The question who was the first owner of copyright in an existing work is to be determined in accordance with the law in force at the time the work was made.

(2) Where before commencement a person commissioned the making of a work in circumstances falling within—

(a) section 4(3) of the 1956 Act or paragraph (a) of the proviso to section 5(1) of the 1911 Act (engravings, photographs and portraits); or

(b) the proviso to section 12(4) of the 1956 Act (sound recordings),

those provisions apply to determine first ownership of copyright in any work made in pursuance of the commission after commencement.

[*cf.* 1988 c. 48 Sch. 1 para. 11 U.K.]

Employee works

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

Commissioned works

12. Section 15 of this Ordinance does not apply to an existing work.

Duration of copyright in existing works

13. (1) The following provisions have effect with respect to the duration of copyright in existing works.

The question which provision applies to a work is to be determined by reference to the facts immediately before commencement; and expressions used in this paragraph which were defined for the purposes of the 1956 Act have the same meaning as in that Act.

(2) Copyright in the following descriptions of work continues to subsist until the date on which it would have expired under the 1956 Act—

(a) literary, dramatic or musical works in relation to which the period of 50 years mentioned in the proviso to section 2(3) of the 1956 Act (duration of copyright in works made available to the public after the death of the author) has begun to run;

(3) 新的版權條文就構成在 1972 年 12 月 12 日之前製作的影片一部分的照片而具有效力，猶如該等條文就並非構成影片的一部分的照片而具有效力一樣。

(4) 就影片而言，如版權並不據此而存在或曾經存在於該影片，但——

(a) 影片作為原創的戲劇作品而受到或曾經受到保護；或

(b) 憑藉對構成影片的一部分的照片的保護而受到或曾經受到保護，

則在新的版權條文及本附表中，凡提述影片的版權，即提述作為原創的戲劇作品的版權或構成影片的一部分的照片的版權（視屬何情況而定）。

[*比照* 1988 c. 48 Sch. 1 para. 7 U.K.]

8. 版權並不存在於——

(a) 在 1972 年 12 月 12 日之前作出的廣播；或

(b) 在 1994 年 3 月 11 日之前包括在有線傳播節目服務內的有線傳播節目，而就本條例第 20(3) 條（重播的版權期限）而言，無須理會任何該等廣播或有線傳播節目。

[*比照* 1988 c. 48 Sch. 1 para. 9 U.K.]

作品的作者

9. 就第 II 部第 IV 分部賦予的權利（精神權利）而言，誰是某現存的作品作者此一問題，須按照新的版權條文而裁定，而就其他各方面而言，須按照在該作品製作時有效的法律而裁定。

[*比照* 1988 c. 48 Sch. 1 para. 10 U.K.]

版權的第一擁有權

10. (1) 誰是現存的作品版權第一擁有人此一問題，須按照在作品製作時有效的法律而裁定。

(2) 如在生效之前有人在以下條文所指的情況下委託製作作品——

(a) 《1956 年法令》第 4(3) 條或《1911 年法令》第 5(1) 條的但書 (a) 段（雕刻品、照片及畫像）；或

(b) 《1956 年法令》第 12(4) 條的但書（聲音紀錄），

上述條文適用於裁定依據委託而在生效之後製作的作品的版權第一擁有權。

[*比照* 1988 c. 48 Sch. 1 para. 11 U.K.]

僱員的作品

11. 本條例第 14(2) 條並不適用於現存的作品。

委託作品

12. 本條例第 15 條並不適用於現存的作品。

現存的作品版權期限

13. (1) 以下條文就現存的作品版權期限而具有效力。

哪一項條文適用於某作品此一問題，須參照在緊接生效之前的事實而裁定，而在本段中，凡所使用的詞句曾為《1956 年法令》的目的而界定，則該等詞句的涵義與該法令中該等詞句的涵義相同。

(2) 以下類別的作品版權持續存在，直至該等版權本應根據《1956 年法令》屆滿的日期為止——

(a) 文學作品、戲劇作品或音樂作品，而《1956 年法令》第 2(3) 條的但書（在作者死後向公眾提供的作品的版權期限）就該等作品提及的 50 年期間已開始計算；

- (b) engravings in relation to which the period of 50 years mentioned in paragraph (a) of the proviso to section 3(4) of the 1956 Act (duration of copyright in works published after the death of the author) has begun to run;
- (c) published photographs and photographs taken before 12 December 1972;
- (d) published sound recordings and sound recordings made before 12 December 1972;
- (e) published films.
- (3) Copyright in anonymous or pseudonymous literary, dramatic, musical or artistic works (other than photographs) or films continues to subsist—
- (a) if the work is published, until the date on which it would have expired in accordance with the 1956 Act; and
- (b) if the work is unpublished, until the end of the period of 50 years from the end of the calendar year in which the new copyright provisions come into force or, if during that period the work is first made available to the public within the meaning of section 17(5) or 19(6) of this Ordinance (duration of copyright in works of unknown authorship), the date on which copyright expires in accordance with that provision, unless, in any case, the identity of the author becomes known before that date, in which case section 17(2) or 19(2) of this Ordinance applies (general rule: life of the author plus 50 years).
- (4) Copyright in the following descriptions of work continues to subsist until the end of the period of 50 years from the end of the calendar year in which the new copyright provisions come into force—
- (a) literary, dramatic and musical works of which the author has died and in relation to which none of the acts mentioned in paragraphs (a) to (e) of the proviso to section 2(3) of the 1956 Act has been done;
- (b) unpublished engravings of which the author has died;
- (c) unpublished photographs taken on or after 12 December 1972;
- (d) unpublished films of which the person by whom the arrangements necessary for the making of the film were undertaken has died.
- (5) Copyright in an unpublished sound recordings made on or after 12 December 1972 continues to subsist until the end of the period of 50 years from the end of the calendar year in which the new copyright provisions come into force unless the recording is published before the end of that period in which case copyright in it continues until the end of the period of 50 years from the end of the calendar year in which the recording is published.
- (6) Copyright in any other description of existing work continues to subsist until the date on which copyright in that description of work expires in accordance with sections 17 to 21 of this Ordinance.
- (7) The above provisions do not apply to works subject to Government or Legislative Council copyright (see paragraphs 32 to 34 below).

[cf. 1988 c. 48 Sch. 1 para. 12 U.K.]

Acts infringing copyright

14. (1) The provisions of Divisions II and III of Part II as to the acts constituting an infringement of copyright apply only in relation to acts done after commencement; the provisions of the 1956 Act and the Copyright Ordinance continue to apply in relation to acts done before commencement.

(2) Section 25 of this Ordinance does not apply in relation to a copy of a sound recording or computer program acquired by any person before 10 May 1996 for the purpose of renting it to the public.

(3) Where any person has before 1 January 1995 incurred any significant expenditure or liability in connection with the rental of any copy of a work or subject-matter in a manner that at the time was lawful, or for the purpose of or with a view to such a rental at a time when it would have been lawful but for the commencement of section 10 of the WTO Ordinance, nothing in that Ordinance shall diminish or prejudice any right or interest arising from or in connection with such action that is subsisting and valuable immediately before the commencement of that section if that person pays to the person who by virtue of the commencement of that section becomes entitled to restrain the rental such equitable remuneration as the parties agree, or failing such agreement, as the Copyright Tribunal may determine.

- (b) 雕刻品，而《1956年法令》第3(4)條的但書(a)段(在作者死後發表的作品的版權期限)就該等作品提及的50年期間已開始計算；
- (c) 已發表的照片及在1972年12月12日之前拍攝的照片；
- (d) 已發表的聲音紀錄及在1972年12月12日之前製作的聲音紀錄；
- (e) 已發表的影片。

(3) 除非在任何個案中在以下日期之前知道作者的身分(在該情況下本條例第17(2)或19(2)條(一般規則：作者在世的期間另加50年)適用)，否則不具名或以假名署名的文學作品、戲劇作品、音樂作品或藝術作品(照片除外)或影片的版權持續存在，直至以下日期為止——

- (a) (如該等作品已發表)該等版權按照《1956年法令》本應屆滿的日期；及
- (b) (如該等作品未發表)在新的版權條文於某公曆年生效的情況下，自該年年終起計的50年期間完結之日，但如在該期間該等作品按本條例第17(5)或19(6)條(作者不為人知的作品的版權期限)所指的首次向公眾提供，則指該等版權的期限按照該條文所規定而屆滿的日期。

(4) 凡新的版權條文於某公曆年開始生效，以下作品類別的版權持續存在，直至自該年年終起計的50年期間完結為止——

- (a) 已死亡的作者生前所作的文學作品、戲劇作品及音樂作品，而《1956年法令》第2(3)條的但書(a)至(e)段提及的作為均沒有就該等作品而作出；
- (b) 已死亡的作者生前所作的未發表雕刻品；
- (c) 在1972年12月12日或之後拍攝的未發表照片；
- (d) 未發表影片，而從事作出製作該影片所需安排的人已死亡。

(5) 凡新的版權條文於某一公曆年生效而某未發表的聲音紀錄是在1972年12月12日或之後製作的，則該未發表的聲音紀錄的版權持續存在，直至自該某一公曆年年終起計的50年期間完結為止；但如該未發表的聲音紀錄在自該某一公曆年年終起計的50年期間完結之前的另一公曆年發表，則該聲音紀錄的版權持續存在，直至自該另一公曆年年終起計的50年期間完結為止。

(6) 任何其他現存的作品類別的版權持續存在，直至該等作品類別的版權按照本條例第17至21條屆滿的日期為止。

(7) 上述條文不適用於受政府版權或立法局版權規限的作品(參閱以下第32至34段)。

[比照1988 c. 48 Sch. 1 para. 12 U.K.]

侵犯版權的作為

14. (1) 第II部第II及III分部關於構成侵犯版權的作為的條文，只就在生效之後作出的作為而適用；《1956年法令》及《版權條例》的條文持續就在生效之前作出的作為而適用。

(2) 本條例第25條並不就任何人在1996年5月10日之前為租賃予公眾而取得的聲音紀錄或電腦程式的複製品而適用。

(3) 凡任何人在1995年1月1日之前，就任何作品或標的物的複製品的租賃而招致大量開支或法律責任，而招致的方式在當時是合法的，又或任何人在該日期之前，為上述租賃的目的或為達致上述租賃而招致大量開支或法律責任，而在當時，若非因《世界貿易組織條例》第10條的實施，該租賃本會是合法的，則如該人向憑藉該條的實施而有權限制租賃的人支付公平的酬報(數額由雙方協議，如無協議，則由版權審裁處裁定)，該條例既不削減亦不損害任何因上述行動而產生的或與上述行動相關的任何權利或權益，但該權利或權益須在緊接該條的實施前已存在兼有價值。

(4) For the purposes of section 35 of this Ordinance (meaning of “infringing copy”) the question whether the making of an article constituted an infringement of copyright, or would have done if the article had been made in Hong Kong, is to be determined—

- (a) in relation to an article made on or after 10 May 1996 and before commencement, by reference to the 1956 Act as amended by the WTO Ordinance;
- (b) in relation to an article made on or after 12 December 1972 and before 10 May 1996, by reference to the 1956 Act immediately before it was amended by the WTO Ordinance; and
- (c) in relation to an article made before 12 December 1972, by reference to the 1911 Act.

(5) For the purposes of section 35 of the Ordinance (meaning of “infringing copy”), if an article has been imported before commencement without infringing copyright under the law existing at the time of importation, the terms of any exclusive licence agreement relating to that article are to be disregarded and, for the avoidance of doubt, any possession or dealing in the article which takes place after commencement shall not infringe copyright within the terms of sections 31 and 118 to 133 of the Ordinance.

(6) For the purposes of the application of sections 40(2) and 71(3) of this Ordinance (subsequent exploitation of things whose making was, by virtue of an earlier provision of the section, not an infringement of copyright) to things made before commencement, it is to be assumed that the new copyright provisions were in force at all material times.

(7) Section 63 of this Ordinance (articles for producing material in a particular typeface) applies where articles have been marketed as mentioned in subsection (1) of that section before commencement with the substitution for the period mentioned in subsection (2) of that section of the period of 25 years from the end of the calendar year in which the new copyright provisions come into force.

(8) Section 64 of this Ordinance (transfer of copies, adaptations, &c. of work in electronic form) does not apply in relation to a copy purchased before commencement.

(9) In section 74 of this Ordinance (reconstruction of buildings) the reference to the owner of the copyright in the drawings or plans is, in relation to buildings constructed before commencement, to the person who at the time of the construction was the owner of the copyright in the drawings or plans under the 1956 Act or the 1911 Act.

[cf. 1988 c. 48 Sch. 1 para. 14 U.K.]

15. (1) Sections 66 and 75 of this Ordinance (anonymous or pseudonymous works: acts permitted on assumptions as to expiry of copyright or death of author) has effect in relation to existing works subject to the following provisions.

(2) Subsection (1)(b)(i) of section 66 (assumption as to expiry of copyright) does not apply in relation to photographs.

(3) Subsection (1)(b)(ii) of the sections (assumption as to death of author) applies only—

- (a) where paragraph 11(3)(b) applies (unpublished anonymous or pseudonymous works), after the end of the period of 50 years from the end of the calendar year in which the new copyright provisions come into force; or
- (b) where paragraph 11(6) applies (cases in which the duration of copyright is the same under the new copyright provisions as under the previous law).

[cf. 1988 c. 48 Sch. 1 para. 15 U.K.]

16. The following provisions of section 7 of the 1956 Act continue to apply in relation to existing works—

- (a) subsection (6) (copying of unpublished works from manuscript or copy in library, museum or other institution);
- (b) subsection (7) (publication of work containing material to which subsection (6) applies, except paragraph (a) (duty to give notice of intended publication));
- (c) subsection (8) (subsequent broadcasting, performance, etc. of material published in accordance with subsection (7)),

and subsection (9)(d) (illustrations) continues to apply for the purposes of those provisions.

[cf. 1988 c. 48 Sch. 1 para. 16 U.K.]

17. Where in the case of a dramatic or musical work made before 1 July 1912, the right conferred by the 1911 Act did not include the sole right to perform the work in public, the acts restricted by the copyright are to be treated as not including—

- (a) performing the work in public;

(4) 就本條例第 35 條 (“侵犯版權複製品”的涵義) 而言, 某物品的製作是否構成侵犯版權或 (如該物品是在香港製作的) 本會構成侵犯版權此一問題須按以下規定裁定——

- (a) 就在 1996 年 5 月 10 日或之後但在生效之前製作的物品而言, 須參照經《世界貿易組織條例》修訂的《1956 年法令》而裁定;
- (b) 就在 1972 年 12 月 12 日或之後但在 1996 年 5 月 10 日之前製作的物品而言, 須參照在緊接《世界貿易組織條例》對《1956 年法令》作出修訂之前的《1956 年法令》而裁定; 及
- (c) 就在 1972 年 12 月 12 日之前製作的物品而言, 須參照《1911 年法令》而裁定。

(5) 就條例第 35 條 (“侵犯版權複製品”的涵義) 而言, 如某物品在生效之前已輸入, 而根據當時法律並沒有侵犯版權, 則對於關乎該物品的任何專用特許協議的條款毋須理會, 而為免產生疑問, 在生效之後任何對該物品的管有或對該物品進行的交易, 均不屬條例第 31 條及第 118 條至 133 條所指的侵犯版權。

(6) 為本條例第 40(2) 及 71(3) 條 (對某東西其後的利用, 而該東西的製作憑藉該條的較早條文並不屬侵犯版權) 適用於在生效之前製作的東西的目的, 須假設新的版權條文在所有關鍵時刻均有效。

(7) 凡任何產生以某種字體展現的材料的物品在生效之前如本條例第 63(1) 條所述的推出市場, 本條例第 63 條 (產生以某種字體展現的材料的物品) 即適用, 但在新的版權條文於某公曆年生效的情況下, 第 63(2) 條所提及的期間須代以自該年年終起計的 25 年期間。

(8) 本條例第 64 條 (電子形式作品的複製品、改編本等的轉移) 不就在生效之前購買的複製品而適用。

(9) 就在生效之前建成的建築物而言, 在本條例第 74 條 (重建建築物) 中提述繪圖或圖則的版權擁有人, 即提述根據《1956 年法令》或《1911 年法令》在該建築物建造之時為繪圖或圖則的版權的擁有人的人。

[比照 1988 c. 48 Sch. 1 para. 14 U.K.]

15. (1) 除以下條文另有規定外, 本條例第 66 及 75 條 (不具名或以假名署名的作品: 基於關於版權期限屆滿或作者死亡的假設而允許作出的作為) 就現存的作品具有效力。

(2) 第 66 條第 (1)(b)(i) 款 (版權期限已屆滿的假設) 不適用於照片。

(3) 如——

- (a) 第 11(3)(b) 段 (未發表的不具名或以假名署名的作品) 適用, 而新的版權條文於某公曆年生效, 則第 66 及 75 條第 (1)(b)(ii) 款 (作者死亡的假設) 只在自該年年終起計的 50 年期間完結之後適用; 或
- (b) 上述第 11(6) 段 (版權期限根據先前的法律和根據新的版權條文屬相同的個案) 適用, 則第 66 及 75 條第 (1)(b)(ii) 款 (作者死亡的假設) 方適用。

[比照 1988 c. 48 Sch. 1 para. 15 U.K.]

16. 《1956 年法令》第 7 條的以下條文持續就現存的作品適用——

- (a) 第 (6) 款 (自圖書館、博物館或其他機構內的手稿或複製品複製未發表的作品);
- (b) 第 (7) 款 (發表載有第 (6) 款適用的材料的作品), 但 (a) 段 (就意圖發表給予通知的責任) 則除外;
- (c) 第 (8) 款 (就按照第 (7) 款發表的材料而後來作出的廣播、表演等),

而第 (9)(d) 款 (插圖) 持續為該等條文的目的適用。

[比照 1988 c. 48 Sch. 1 para. 16 U.K.]

17. 如戲劇作品或音樂作品在 1912 年 7 月 1 日之前製作, 而《1911 年法令》賦予的權利並不包括公開表演該等作品的唯一權利, 受版權所限制的作為須視為不包括——

- (a) 公開表演該等作品;

(b) broadcasting the work or including it in a cable programme service; or
 (c) doing any of the above in relation to an adaptation of the work,
 and where the right conferred by the 1911 Act consisted only of the sole right to perform the work in public, the acts restricted by the copyright are to be treated as consisting only of those acts.

[cf. 1988 c. 48 Sch. 1 para. 17 U.K.]

18. Where a work made before 1 July 1912 consists of an essay, article or portion forming part of and first published in a review, magazine or their periodical or work of a like nature, the copyright is subject to any right of publishing the essay, article, or portion in a separate form to which the author was entitled at the commencement of the 1911 Act.

[cf. 1988 c. 48 Sch. 1 para. 18 U.K.]

Enforcement of copyright in registrable design

19. (1) Where section 10 of the 1956 Act (effect of industrial application of design corresponding to artistic work) applied in relation to an artistic work at any time before 1 August 1989, section 87(3) of this Ordinance applies and the period of 15 years mentioned there is to be calculated from the end of the calendar year in which the articles were first marketed.

(2) Where section 10 of the 1956 Act (effect of industrial application of design corresponding to artistic work) applied in relation to an artistic work at any time on or after 1 August 1989 and before commencement, section 87(3) of this Ordinance applies with the substitution for the period of 15 years mentioned there of the period of 25 years and the period of 25 years is to be calculated from the end of the calendar year in which the articles were first marketed.

(3) Except as provided in subparagraphs (1) and (2), section 87 of this Ordinance applies only where articles are marketed as mentioned in section 87(1)(b) of this Ordinance after commencement.

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

Abolition of statutory recording licence

20. Section 8 of the 1956 Act (statutory licence to copy records sold by retail) and the Copyright Royalty System (Records) Regulations (App. I, p. AL1) continue to apply where notice under subsection (1)(b) of section 8 was given before the repeal of that section by this Ordinance, but only in respect of the making of records—

- (a) within one year of the repeal coming into force; and
- (b) up to the number stated in the notice as intended to be sold.

[cf. 1988 c. 48 Sch. 1 para. 21 U.K.]

Moral rights

21. (1) No act done before commencement is actionable by virtue of any provision of Division IV of Part II (moral rights).

(2) Section 43 of the 1956 Act (false attribution of authorship) continues to apply in relation to acts done before commencement.

[cf. 1988 c. 48 Sch. 1 para. 22 U.K.]

22. (1) The following provisions have effect with respect to the rights conferred by—
- (a) section 89 of this Ordinance (right to be identified as author or director); and
 - (b) section 92 of this Ordinance (right to object to derogatory treatment of work).
- (2) The rights do not apply—
- (a) in relation to a literary, dramatic, musical and artistic work of which the author died before commencement; or

(b) 廣播該等作品或將該等作品包括在有線傳播節目服務內；或

(c) 就該等作品的改編本作出任何上述作為，

而凡《1911年法令》賦予的權利只由公開表演該等作品的唯一權利構成，則受版權限制的作為須視為只由該等作為構成。

[比照 1988 c. 48 Sch. 1 para. 17 U.K.]

18. 凡在 1912 年 7 月 1 日之前製作的作品由論文、文章或其部分構成，而該論文、文章或其部分構成評論、雜誌或期刊或性質類似的作品，並在該評論、雜誌或期刊或性質類似的作品首次發表，則版權須受作者在《1911 年法令》開始生效時享有以獨立形式發表該論文、文章或其部分的權利所規限。

[比照 1988 c. 48 Sch. 1 para. 18 U.K.]

強制執行可予註冊外觀設計的版權

19. (1) 凡《1956 年法令》第 10 條(在工業上應用與藝術作品相應的外觀設計的效力)在 1989 年 8 月 1 日之前的任何時間就任何藝術作品而適用，則本條例第 87(3) 條即適用，而其中提及的 15 年期間即由有關物品首次推出市場的公曆年年終起計算。

(2) 凡《1956 年法令》第 10 條(在工業上應用與藝術作品相應的外觀設計的效力)在 1989 年 8 月 1 日或該日之後但在生效之前的任何時間就任何藝術作品而適用，則本條例第 87(3) 條即適用，但須以 25 年期間代替其中提及的 15 年期間，而該段 25 年期間即由有關物品首次推出市場的公曆年年終起計算。

(3) 除第 (1) 及 (2) 節另有規定外，本條例第 87 條只有在有關物品在生效之後如本條例第 87(1)(b) 條中提及的情況般推出市場才適用。

[比照 1988 c. 48 Sch. 1 para. 20 U.K.]

廢除法定的製作紀錄特許

20. 凡《1956 年法令》第 8 條第 (1)(b) 款所指的通知已在本條例廢除該條之前作出，則《1956 年法令》第 8 條(複製以零售方式出售的紀錄的法定特許)及《版權使用費制度(紀錄)規例》(附錄 I AL1 頁)) 持續適用，但只就——

- (a) 在有關的廢除生效的一年內進行；及
- (b) 最多只達在該通知上列明的擬出售的數量，

的紀錄的製作而適用。

[比照 1988 c. 48 Sch. 1 para. 21 U.K.]

精神權利

21. (1) 不可憑藉第 II 部第 IV 分部(精神權利)的任何條文而就在生效之前作出的作為提起訴訟。

(2) 《1956 年法令》第 43 條(作者的虛假署名)持續就在生效之前作出的作為而適用。

[比照 1988 c. 48 Sch. 1 para. 22 U.K.]

22. (1) 以下條文就——

- (a) 本條例第 89 條(被識別為作者或導演的權利)；及
- (b) 本條例第 92 條(反對作品受貶損處理的權利)，

所賦予的權利而具有效力。

(2) 凡——

- (a) 文學作品、戲劇作品、音樂作品及藝術作品的作者在生效之前死亡，該等權利並不就該作品而適用；或

- (b) in relation to a film made before commencement.
- (3) The rights in relation to an existing literary, dramatic, musical or artistic work do not apply—
- (a) where copyright first vested in the author, to anything which by virtue of an assignment of copyright made or licence granted before commencement may be done without infringing copyright;
- (b) where copyright first vested in a person other than the author, to anything done by or with the licence of the copyright owner.
- (4) The rights do not apply to anything done in relation to a record made in pursuance of section 8 of the 1956 Act (statutory recording licence).

[cf. 1988 c. 48 Sch. 1 para. 23 U.K.]

Certification of rental to the public of copies of computer programs or sound recordings

23. The repeal by this Ordinance of sections 41A (special provisions as to rental of computer programs and sound recordings) and 41B (application to settle royalty or other sum payable for rental of computer programs or sound recordings) of the Copyright Ordinance does not affect the operation of those sections in relation to any certification made by the Secretary for Trade and Industry under section 41A(4) of the Copyright Ordinance before commencement.

Assignments and licences

24. (1) Any document made or event occurring before commencement which had any operation—
- (a) affecting the ownership of the copyright in an existing work; or
- (b) creating, transferring or terminating an interest, right or licence in respect of the copyright in an existing work,
- has the corresponding operation in relation to copyright in the work under this Ordinance.
- (2) Expressions used in such a document are to be construed in accordance with their effect immediately before commencement.

[cf. 1988 c. 48 Sch. 1 para. 25 U.K.]

25. (1) Section 102(1) of this Ordinance (assignment of future copyright: statutory vesting of legal interest on copyright coming into existence) does not apply in relation to an agreement made before 12 December 1972.

(2) The repeal by this Ordinance of section 37(2) of the 1956 Act (assignment of future copyright: devolution of right where assignee dies before copyright comes into existence) does not affect the operation of that provision in relation to an agreement made before commencement.

[cf. 1988 c. 48 Sch. 1 para. 26 U.K.]

26. (1) Where the author of a literary, dramatic, musical or artistic work was the first owner of the copyright in it, no assignment of the copyright and no grant of any interest in it, made by him (otherwise than by will) on or after 1 July 1912 and before 12 December 1972, shall operate to vest in the assignee or grantee any rights with respect to the copyright in the work beyond the expiration of 25 years from the death of the author.

(2) The reversionary interest in the copyright expectant on the termination of that period may after commencement be assigned by the author during his life but in the absence of any assignment, on his death, devolves on his legal personal representatives as part of his estate.

- (3) Nothing in this paragraph affects—
- (a) an assignment of the reversionary interest by a person to whom it has been assigned;
- (b) an assignment of the reversionary interest after the death of the author by his personal representatives or any person becoming entitled to it; or
- (c) any assignment of the copyright after the reversionary interest has fallen in.
- (4) Nothing in this paragraph applies to the assignment of the copyright in a collective work or a licence to publish a work or part of a work as part of a collective work.
- (5) In subparagraph (4) “collective work” (匯集作品) means—
- (a) any encyclopaedia, dictionary, yearbook, or similar work;
- (b) a newspaper, review, magazine, or similar periodical; and

(b) 影片在生效之前製作，該等權利並不就該影片而適用。

- (3) 就現存的文學作品、戲劇作品、音樂作品或藝術作品而有的權利不適用於以下事情——
- (a) (凡版權首先歸屬作者)任何憑藉在生效之前作出的版權轉讓或批出的特許而作出不屬侵犯版權的事情；
- (b) (凡版權首先歸屬並非作者的人)版權擁有人作出的或在其特許下作出的任何事情。
- (4) 該等權利不適用於就依據《1956年法令》(第8條)(法定的製作紀錄特許)製作的紀錄而作出的任何事情。

[比照 1988 c. 48 Sch. 1 para. 23 U.K.]

電腦程式或聲音紀錄的複製品租賃予公眾的證明

23. 本條例廢除《版權條例》第41A(租賃電腦程式及聲音紀錄的特別條文)及41B(就結算租賃電腦程式或聲音紀錄而須付的使用費或其他款項而提出的申請)，並不影響該等條文在工商司在生效之前根據《版權條例》第41A(4)條作出證明方面的施行。

轉讓及特許

24. (1) 凡在生效之前作出的文件或發生的事件——
- (a) 具有影響現存的作品版權的擁有權的效力；或
- (b) 具有產生、轉移或終止在現存的作品版權方面的權益、權利或特許的效力，
- 則該等文件或事件對該作品在本條例下的版權具有相應的效力。
- (2) 該等文件中使用的詞句須按照其在緊接生效之前的效力而解釋。

[比照 1988 c. 48 Sch. 1 para. 25 U.K.]

25. (1) 本條例第102(1)條(未來版權的轉讓：在版權產生之時將其法定權益藉法例規定而作出歸屬)不就在1972年12月12日之前作出的協議而適用。

(2) 本條例廢除《1956年法令》第37(2)條(未來版權的轉讓：承讓人在版權產生之前死亡的權利轉予)，並不影響該條就在生效之前作出的協議而施行。

[比照 1988 c. 48 Sch. 1 para. 26 U.K.]

26. (1) 凡文學作品、戲劇作品、音樂作品或藝術作品的作者是該作品的版權的第一擁有人，則該作者在1912年7月1日或之後但在1972年12月12日之前並非藉遺囑而就該版權作出的轉讓或就其權益作出的授予，不具有將關於該作品的版權的任何權利歸屬承讓人或承授人超過自作者死亡起計的25年屆滿之時的效力。

(2) 作者可在其在生之時並在生效之後就預期在上述期間終止時產生的版權的復歸權益作出轉讓，但如沒有任何轉讓，則在作者死亡時，該利益須作為其遺產一部分轉予其法定遺產代理人。

- (3) 本段並不影響——
- (a) 由獲轉讓復歸權益的人轉讓該權益；
- (b) 在作者死亡後由其遺產代理人或任何變成有權享有復歸權益的人轉讓該權益；或
- (c) 在復歸權益到期之後作出的版權轉讓。
- (4) 本段不適用於匯集作品的版權的轉讓或就作為匯集作品一部分發表的作品或作品的部分的特許。
- (5) 在第(4)節中，“匯集作品”(collective work)指——
- (a) 百科全書、字典、詞典、年鑑或相類的作品；
- (b) 報章、評論、雜誌或相類的期刊；及

- (c) any work written in distinct parts by different authors, or in which works or parts of works of different authors are incorporated.

[cf. 1988 c. 48 Sch. 1 para. 27 U.K.]

27. (1) This paragraph applies where copyright subsists in a literary, dramatic, musical or artistic work made before 1 July 1912 in relation to which the author, before the commencement of the 1911 Act, made such an assignment or grant as was mentioned in paragraph (a) of the proviso to section 24(1) of that Act (assignment or grant of copyright or performing right for full term of the right under the previous law).

(2) If before commencement any event has occurred or notice has been given which by virtue of paragraph 38 of the Seventh Schedule to the 1956 Act had any operation in relation to copyright in the work under that Act, the event or notice has the corresponding operation in relation to copyright under this Ordinance.

(3) Any right which immediately before commencement would by virtue of paragraph 38(3) of that Schedule have been exercisable in relation to the work, or copyright in it, is exercisable in relation to the work or copyright in it under this Ordinance.

(4) If in accordance with paragraph 38(4) of that Schedule copyright would, on a date on or after 12 December 1972, have reverted to the author or his personal representatives and that date falls after the commencement of the new copyright provisions—

- (a) the copyright in the work reverts to the author or his personal representatives, as the case may be; and
(b) any interest of any other person in the copyright which subsists on that date by virtue of any document made before 1 July 1912 thereupon determines.

[cf. 1988 c. 48 Sch. 1 para. 28 U.K.]

28. Section 103(2) of this Ordinance (rights of exclusive licensee against successors in title of person granting licence) does not apply in relation to an exclusive licence granted before commencement.

[cf. 1988 c. 48 Sch. 1 para. 29 U.K.]

Bequests

29. (1) Section 104 of this Ordinance (copyright to pass under will with original document or other material thing embodying unpublished work)—

- (a) does not apply where the testator died before 12 December 1972; and
(b) where the testator died on or after that date and before commencement, applies only in relation to an original document embodying a work.

(2) In the case of an author who died before 12 December 1972, the ownership after his death of a manuscript of his, where such ownership has been acquired under a testamentary disposition made by him and the manuscript is of a work which has not been published or performed in public, is prima facie proof of the copyright being with the owner of the manuscript.

[cf. 1988 c. 48 Sch. 1 para. 30 U.K.]

Remedies for infringement

30. (1) Sections 107 and 108 of this Ordinance (remedies for infringement) apply only in relation to an infringement of copyright committed after commencement; section 17 of the 1956 Act continues to apply in relation to infringements committed before commencement.

(2) Section 109 of this Ordinance (delivery up of infringing copies) applies to infringing copies and other articles made before or after commencement; section 18 of the 1956 Act, and section 7 of the 1911 Act, (conversion damages, etc.), do not apply after commencement except for the purposes of proceedings begun before commencement.

(3) Sections 112 and 113 of this Ordinance (rights and remedies of exclusive licensee) apply where sections 107 to 109 of this Ordinance apply; section 19 of the 1956 Act continues to apply where section 17 or 18 of that Act applies.

- (c) 由不同的作者寫作獨立部分的作品，或包含不同作者的作品或其作品的部分的作品。

[比照 1988 c. 48 Sch. 1 para. 27 U.K.]

27. (1) 凡版權存在於在 1912 年 7 月 1 日之前製作的文學作品、戲劇作品、音樂作品或藝術作品，而其作者在《1911 年法令》的實施之前作出該法令第 24(1) 條但書 (a) 段 (根據先前的法律就版權或表演的權利的整段期限而作出的版權或表演的權利的轉讓或授予) 所述的轉讓或授予，則本段即適用。

(2) 如在生效之前已發生某事件或給予某通知，而該事件或該通知憑藉《1956 年法令》附表 7 第 38 段就作品在該法令下的版權具有效力，則該事件或該通知就在本條例下的版權具有相應的效力。

(3) 在緊接生效之前憑藉該附表第 38(3) 段本可就作品或其版權行使的權利，即可根據本條例就作品或其版權行使。

(4) 如按照該附表第 38(4) 段，版權本會在 1972 年 12 月 12 日或之後的某一日期復歸作者或其遺產代理人，而該某一日期是在新的版權條文生效之後——

- (a) 有關作品的版權即復歸該作者或其遺產代理人 (視屬何情況而定)；及
(b) 凡有關版權憑藉在 1912 年 7 月 1 日之前作出的文件而在該某一日期存在，任何其他人對該版權的權益即於該某一日期終止。

[比照 1988 c. 48 Sch. 1 para. 28 U.K.]

28. 本條例第 103(2) 條 (專用特許持有人相對於批出特許的人的所有權繼承人而言的權利) 不就在生效之前批出的專用特許而適用。

[比照 1988 c. 48 Sch. 1 para. 29 U.K.]

遺贈

29. (1) 如立遺囑人——

- (a) 在 1972 年 12 月 12 日之前死亡，則本條例第 104 條 (版權藉遺囑而與載有未發表作品的原稿或其他實物一併轉移) 並不適用；及
(b) 在該日期或之後但在生效之前死亡，則本條例第 104 條只就載有作品的原稿而適用。

(2) 如作者在 1972 年 12 月 12 日之前死亡，而在其死後其手稿的擁有權是根據該作者作出的遺囑性質的處置而取得的，此外，該手稿是未經發表或公開表演的作品的手稿，則該擁有權即為版權屬於該手稿的擁有人的表面證明。

[比照 1988 c. 48 Sch. 1 para. 30 U.K.]

侵犯權利的補救

30. (1) 本條例第 107 及 108 條 (侵犯權利的補救) 只就在生效之後作出的侵犯版權而適用；《1956 年法令》第 17 條持續就在生效之前作出的侵犯權利而適用。

(2) 本條例第 109 條 (交付侵犯版權複製品) 適用於在生效之前或之後製作的侵犯版權複製品及其他物品；《1956 年法令》第 18 條及《1911 年法令》第 7 條 (就轉為己用的損害賠償等) 在生效之後並不適用，但就在生效之前展開的法律程序而言，則屬例外。

(3) 在本條例第 107 至 109 條適用的情況，則本條例第 112 及 113 條 (專用特許持有人的權利及補救) 亦適用；在《1956 年法令》第 17 或 18 條適用的情況，該法令第 19 條亦持續適用。

(4) Sections 115 to 117 of this Ordinance (presumptions) apply only in proceedings brought by virtue of this Ordinance; section 20 of the 1956 Act continues to apply in proceedings brought by virtue of that Act.

[*cf.* 1988 c. 48 Sch. 1 para. 31 U.K.]

31. Sections 112 and 113 of this Ordinance (rights and remedies of exclusive licensee) do not apply to a licence granted before 12 December 1972.

[*cf.* 1988 c. 48 Sch. 1 para. 32 U.K.]

32. The provisions of section 118 of this Ordinance (criminal liability for making or dealing with infringing articles, etc.) apply only in relation to acts done after commencement; section 21 of the 1956 Act (penalties and summary proceedings in respect of dealings which infringe copyright) and sections 5 and 5A of the Copyright Ordinance (offences in connection with infringing copies and making infringing copies outside Hong Kong, etc.) continue to apply in relation to acts done before commencement.

[*cf.* 1988 c. 48 Sch. 1 para. 33 U.K.]

Ships, aircraft and hovercraft

33. Section 179 of this Ordinance (ships, aircraft and hovercraft registered in Hong Kong) does not apply in relation to anything done before commencement.

[*cf.* 1988 c. 48 Sch. 1 para. 39 U.K.]

Government copyright

34. (1) Section 182 of this Ordinance (general provisions as to Government copyright) applies to an existing work if—

- (a) it was made, before commencement, by or under the direction or control of—
 - (i) Her Majesty in right of the Government of Hong Kong; or
 - (ii) a department of that Government; or
- (b) it was first published, before commencement, by or under such direction or control, in Hong Kong,

and the work is not one to which section 183, 184 or 185 of this Ordinance applies (copyright in Ordinances, Bills and Legislative Council copyright: see paragraphs 36 and 37 below).

(2) Section 182(1)(b) of this Ordinance (first ownership of copyright) has effect subject to any agreement entered into before commencement under section 39(6) of the 1956 Act.

[*cf.* 1988 c. 48 Sch. 1 para. 40 U.K.]

35. (1) The following provisions have effect with respect to the duration of copyright in existing works to which section 182 of this Ordinance (Government copyright) applies.

The question which provision applies to a work is to be determined by reference to the facts immediately before commencement; and expressions used in this paragraph which were defined for the purposes of the 1956 Act have the same meaning as in that Act.

(2) Copyright in the following descriptions of work continues to subsist until the date on which it would have expired in accordance with the 1956 Act—

- (a) published literary, dramatic or musical works;
- (b) artistic works other than engravings or photographs;
- (c) published engravings;
- (d) published photographs and photographs taken before 12 December 1972;
- (e) published sound recordings and sound recordings made before 12 December 1972;
- (f) published films.

(3) Copyright in unpublished literary, dramatic or musical works or films continues to subsist until—

- (a) the date on which copyright expires in accordance with section 182(3) of this Ordinance; or
- (b) the end of the period of 50 years from the end of the calendar year in which the new copyright provisions come into force,

whichever is the later.

(4) 本條例第 115 至 117 條 (推定) 只在憑藉本條例提起的法律程序中適用;《1956 年法令》第 20 條持續適用於憑藉該法令提起的法律程序。

[*比照* 1988 c. 48 Sch. 1 para. 31 U.K.]

31. 本條例第 112 及 113 條 (專用特許持有人的權利及補救) 不適用於在 1972 年 12 月 12 日之前批出的特許。

[*比照* 1988 c. 48 Sch. 1 para. 32 U.K.]

32. 本條例第 118 條的條文 (製作侵犯版權物品或進行侵犯版權物品等交易的刑事法律責任) 只就在生效之後作出的作為而適用;《1956 年法令》第 21 條 (就進行侵犯版權交易的罰則及簡易法律程序) 及《版權條例》第 5 及 5A 條 (與侵犯版權複製品及在香港以外地方製造侵犯版權複製品等相關的罪行) 持續就在生效之前作出的作為而適用。

[*比照* 1988 c. 48 Sch. 1 para. 33 U.K.]

船舶、航空器及氣墊船

33. 本條例第 179 條 (在香港註冊的船舶、航空器及氣墊船) 不就在生效之前作出的任何事情而適用。

[*比照* 1988 c. 48 Sch. 1 para. 39 U.K.]

政府版權

34. (1) 如——

(a) 現存的作品是在生效之前——

- (i) 由女皇陛下香港政府製作或在其指示或控制下所製作的;或
- (ii) 由女皇陛下香港政府的部門製作或在其指示或控制下所製作的;或

(b) 現存的作品是在生效之前由女皇陛下香港政府或其部門或在女皇陛下香港政府或其部門的指示或控制下在香港首次發表的,

而該作品並非本條例第 183、184 或 185 條 (條例、條例草案及立法局版權:參閱以下第 36 及 37 段) 適用的作品,則本條例第 182 條 (政府版權的一般條文) 適用於該現存的作品。

(2) 本條例第 182(1)(b) 條 (版權的第一擁有權) 在於生效之前根據《1956 年法令》第 39(6) 條訂立的協議的規限下具有效力。

[*比照* 1988 c. 48 Sch. 1 para. 40 U.K.]

35. (1) 以下條文就本條例第 182 條 (政府版權) 適用的現存的作品版權期限具有效力。

哪一項條文適用於某作品此一問題,須參照在緊接生效之前的事實而裁定,而如本段使用的詞句曾為《1956 年法令》的目的而界定,則該等詞句的涵義與該法令中該等詞句的涵義相同。

(2) 以下類別的作品版權持續存在,直至該等作品的版權按照《1956 年法令》本會屆滿的日期為止——

- (a) 已發表的文學作品、戲劇作品或音樂作品;
- (b) 除雕刻品或照片外的藝術作品;
- (c) 已發表的雕刻品;
- (d) 已發表的照片及在 1972 年 12 月 12 日之前拍攝的照片;
- (e) 已發表的聲音紀錄及在 1972 年 12 月 12 日之前製作的聲音紀錄;
- (f) 已發表的影片。

(3) 未發表的文學作品、戲劇作品或音樂作品或影片的版權持續存在,直至——

- (a) 版權按照本條例第 182(3) 條屆滿的日期為止;或
- (b) 在新的版權條文在某公曆年生效的情況下自該年年終起計的 50 年期間完結為止,

兩個時間中,以較後者為準。

(4) Copyright in the following descriptions of work continues to subsist until the end of the period of 50 years from the end of the calendar year in which the new copyright provisions come into force—

- (a) unpublished engravings;
- (b) unpublished photographs taken on or after 12 December 1972.

(5) Copyright in a sound recording not falling within subparagraph (2) above continues to subsist until the end of the period of 50 years from the end of the calendar year in which the new copyright provisions come into force, unless the recording is published before the end of that period, in which case copyright expires 50 years from the end of the calendar year in which it is published.

[cf. 1988 c. 48 Sch. 1 para. 41 U.K.]

36. Section 183 of this Ordinance (copyright in Ordinance) applies to existing Ordinances.

[cf. 1988 c. 48 Sch. 1 para. 42 U.K.]

Legislative Council copyright

37. (1) Section 184 of this Ordinance (general provisions as to Legislative Council copyright) applies to existing unpublished literary, dramatic, musical or artistic works, but does not otherwise apply to existing works.

(2) Section 185 of this Ordinance (copyright in Bills) does not apply to a Bill which was presented to the Legislative Council and published before commencement.

[cf. 1988 c. 48 Sch. 1 para. 43 U.K.]

Copyright vesting in certain international organizations

38. (1) Any work in which immediately before commencement copyright subsisted by virtue of section 33 of the 1956 Act is deemed to satisfy the requirements of section 188(1) of this Ordinance.

(2) Copyright in any such work which is unpublished continues to subsist until the date on which it would have expired in accordance with the 1956 Act, or the end of the period of 50 years from the end of the calendar year in which the new copyright provisions come into force, whichever is the earlier.

[cf. 1988 c. 48 Sch. 1 para. 44 U.K.]

Meaning of “publication”

39. Section 196(3) of this Ordinance (construction of building treated as equivalent to publication) applies only where the construction of the building began after commencement.

[cf. 1988 c. 48 Sch. 1 para. 45 U.K.]

Meaning of “unauthorized”

40. For the purposes of the application of the definition in section 198 of this Ordinance (minor definitions) of the expression “unauthorized” in relation to things done before commencement—

- (a) paragraph (a) applies in relation to things done before 12 December 1972 as if the reference to the licence of the copyright owner were a reference to his consent or acquiescence;
- (b) paragraph (b) applies with the substitution for the words “or, in a case” to the end of the words “or any person lawfully claiming under him”; and
- (c) paragraph (c) is disregarded.

[cf. 1988 c. 48 Sch. 1 para. 46 U.K.]

(4) 以下類別的作品的版權持續存在，直至在新的版權條文在某公曆年生效的情況下自該年年終起計的 50 年期間完結為止——

- (a) 未發表的雕刻品；
- (b) 在 1972 年 12 月 12 日或之後拍攝的未發表的照片。

(5) 凡新的版權條文在某公曆年生效，不屬上述第 (2) 節所指的聲音紀錄的版權持續存在，直至自該年年終起計的 50 年期間完結為止；但如該聲音紀錄在自該年年終起計的 50 年期間完結之前的另一公曆年發表，則其版權持續存在，直至自該另一公曆年年終起計的 50 年期間完結時屆滿。

[比照 1988 c. 48 Sch. 1 para. 41 U.K.]

36. 本條例第 183 條 (條例的版權) 適用於現存的條例。

[比照 1988 c. 48 Sch. 1 para. 42 U.K.]

立法局版權

37. (1) 本條例第 184 條 (立法局版權的一般條文) 適用於現存的未發表的文學作品、戲劇作品、音樂作品或藝術作品，但並不在其他情況之下適用於現存的作品。

(2) 本條例第 185 條 (條例草案的版權) 不適用於已提交立法局並在生效之前發表的條例草案。

[比照 1988 c. 48 Sch. 1 para. 43 U.K.]

歸屬某些國際組織的版權

38. (1) 在緊接生效之前憑藉《1956 年法令》第 33 條而有版權存在的作品，須當作符合本條例第 188(1) 條的規定。

(2) 未發表的該等作品的版權持續存在，直至該版權按照《1956 年法令》本會屆滿的日期為止，或如新的版權條文在某公曆年生效，則直至自該年年終起計的 50 年期間完結為止，兩個時間中，以較早者為準。

[比照 1988 c. 48 Sch. 1 para. 44 U.K.]

“發表”的涵義

39. 本條例第 196(3) 條 (建築物的建造視作等同於發表) 只在建築物在生效之後開始建造的情況下適用。

[比照 1988 c. 48 Sch. 1 para. 45 U.K.]

“未經授權”的涵義

40. 為就在生效之前作出的事情而應用在第 198 條 (次要定義) 中“未經授權”一詞的定義的目的——

- (a) 該條 (a) 段就在 1972 年 12 月 12 日之前作出的事情而適用，猶如對版權擁有人的特許的提述是對其同意或默許的提述一樣；
- (b) 該條 (b) 段在該段自“或在第 14(1) 條本會適用的情況下”起至段末的“並非在該人的特許下作出”為止的所有字句由“或並非在作者之下合法地提出申索的人作出”代替的情況下適用；及
- (c) 該條 (c) 段無須理會。

[比照 1988 c. 48 Sch. 1 para. 46 U.K.]

Saving of subsidiary legislation

41. Until rules are made by the Chief Justice under section 174 of this Ordinance, the Copyright Tribunal Rules (App. I, p. BF1) in force immediately before commencement, so far as they are not inconsistent with this Ordinance, continue in force and have effect for all purposes as if made under this Ordinance, subject to such necessary adaptations and modifications as may be necessary for their having effect under this Ordinance.

42. Until rules of court under the Supreme Court Ordinance (Cap. 4) are made for the purposes of sections 144 and 271 of this Ordinance, the Copyright (Border Measures) Rules (L.N. 482 of 1996), so far as they are not inconsistent with this Ordinance, continue in force and have effect as if made for the purposes of those sections subject to such necessary adaptations and modifications as may be necessary for those rules to have effect under the appropriate Part of this Ordinance.

43. Until regulations are made by the Secretary for Trade and Industry under section 46 of this Ordinance, the Copyright (Libraries) Regulations (App. I, p. AJ1) as amended and in force immediately before commencement, so far as they are not inconsistent with this Ordinance, continue in force and have effect for all purposes as if made under this Ordinance, subject to such necessary adaptations and modifications as may be necessary for their having effect under this Ordinance.

SCHEDULE 3

[ss. 233 & 237]

RIGHTS IN PERFORMANCE: TRANSITIONAL PROVISIONS AND SAVINGS

Introductory

1. (1) In this Schedule—
“the Copyright Ordinance” (《版權條例》) means the Copyright Ordinance (Cap. 39) in force immediately before the commencement of Part III of this Ordinance;
“the new performance rights provisions” (新的表演權利條文) means the provisions of this Ordinance relating to rights in performances, that is, Part III (including this Schedule and Schedule 1), Schedules 4 and 5 and so far as they make amendments or repeals consequential on the provisions of Part III.
- (2) References in this Schedule to “commencement”, without more, are to the date on which the new performance rights provisions come into force.
- (3) References in this Schedule to “existing performances” (現存的表演) are to performances given before commencement; and for this purpose a performance which extended over a period is to be taken to have been given when the performance was completed.
2. In relation to the Copyright Ordinance, “performance” (表演) means—
(a) a dramatic performance;
(b) a musical performance; or
(c) a reading or recitation of a literary work,
that is, or so far as it is, an acoustic presentation of an unfixed or live performance given by one or more individual persons.

General principles: continuity of the law

3. The new performance rights provisions apply in relation to performances given before commencement as they apply in relation to performances given after commencement, subject to any express provision to the contrary.
4. (1) The provisions of this paragraph have effect for securing the continuity of the law so far as the new performance rights provisions re-enact (with or without modification) earlier provisions.

附屬法例的保留條文

41. 在緊接生效前具有效力的《版權審裁處規則》(附錄 I BF1 頁), 在不抵觸本條例的範圍內以及為使其根據本條例具有效力而作出屬必需的改編及變通的規限下, 猶如它是根據本條例訂立一樣持續有效, 就各方面具有效力, 直至首席大法官根據本條例第 174 條訂立規則為止。

42. 《版權(邊境措施)規則》(1996 年第 482 號法律公告) 在不抵觸本條例的範圍內以及為使該等規則根據適當的本條例某部具有效力而作出屬必需的改編及變通的規限下, 猶如它是為施行本條例第 144 及 271 條而訂立一樣持續有效, 就各方面具有效力, 直至根據《最高法院條例》(第 4 章) 為施行本條例第 144 及 271 條訂立法院規則為止。

43. 在緊接生效前具有效力並經修訂的《版權(圖書館)規則》(附錄 I AJ1 頁), 在不抵觸本條例的範圍內以及為使其根據本條例具有效力而作出屬必需的改編及變通的規限下, 猶如它是根據本條例而訂立一樣持續有效, 就各方面具有效力, 直至工商司根據本條例第 46 條訂立規例為止。

附表 3

[第 233 及 237 條]

在表演中的權利：過渡性條文及保留條文

引言

1. (1) 在本附表中——
“《版權條例》” (the Copyright Ordinance) 指在緊接本條例第 III 部生效前有效的《版權條例》(第 39 章);
“新的表演權利條文” (the new performance rights provisions) 指關乎在表演中的權利的本條例條文, 即第 III 部 (包括本附表及附表 1)、附表 4 及 5, 以及其就第 III 部的條文而作出相應修訂或廢除的條文的範圍。
- (2) 在本附表中, 凡僅提述“生效”, 即提述新的表演權利條文的生效日期。
- (3) 在本附表中, 凡提述“現存的表演”, 即提述在生效之前作出的表演; 就此而言, 凡某表演歷時一段期間, 當該表演完結時, 須視為已作出該表演。
2. 就《版權條例》而言, “表演” (performance) 指——
(a) 戲劇表演;
(b) 音樂表演; 或
(c) 誦讀或背誦文學作品;
即由一名或多於一名個人作出的有聲方式表達或屬於有聲方式表達的非錄製表演或現場表演。

一般原則：法律的延續

3. 除任何明訂的條文有相反規定外, 新的表演權利條文就在生效之前作出的表演而適用, 一如其就在生效之後作出的表演而適用一樣。
4. (1) 在新的表演權利條文重新制定 (不論有或沒有作出變通) 較早時的條文的範圍內, 本段條文具有確使法律延續的效力。

(2) A reference in an enactment, instrument or other document to performer's rights, or to a performance in which rights subsist, which apart from this Ordinance would be construed as referring to performers' rights under the Copyright Ordinance is to be construed, so far as may be required for continuing its effect, as being, or as the case may require, including, a reference to performers' rights under this Ordinance or to performances in which rights subsist under this Ordinance.

(3) Anything done (including subsidiary legislation made), or having effect as done, under or for the purposes of a provision repealed by this Ordinance has effect as if done under or for the purposes of the corresponding provision of the new performance rights provisions.

(4) References (expressed or implied) in this Ordinance or any other enactment, instrument or document to any of the new performance rights provisions are, so far as the context permits, to be construed as including, in relation to times, circumstances and purposes before commencement, a reference to corresponding earlier provisions.

(5) A reference (expressed or implied) in an enactment, instrument or other document to a provision repealed by this Ordinance is to be construed, so far as may be required for continuing its effect, as a reference to the corresponding provision of this Ordinance.

(6) The provisions of this paragraph have effect subject to any specific transitional provision or saving and to any express amendment made by this Ordinance.

Subsistence of rights in performances

5. (1) The rights conferred by Part III subsist in an existing performance after commencement if—

(a) the performance was a qualifying performance within the meaning of the Copyright Ordinance or would be a qualifying performance had it been given after commencement; and

(b) either—

(i) the performance was given not earlier than 50 years before the first day of the calendar year in which the new performance rights provisions commence; or
(ii) if the fixation of the performance was released within 50 years from the end of the calendar year in which the performance was given, the release took place not earlier than 50 years before the first day of the calendar year in which the new performance rights provisions commence.

(2) The rights conferred by Part III in an existing performance continue to subsist until the date on which those rights in that performance expire in accordance with section 214 of this Ordinance.

Contrary rights

6. Where any person has before commencement incurred any significant expenditure or liability in connection with the fixation of a performance or reproduction of a fixation in a manner that at the time was lawful, or for the purpose of or with a view to the fixation of a performance or reproduction of a fixation at a time when it would have been lawful but for the commencement, nothing in this Ordinance diminishes or prejudices any right or interest arising from or in connection with such action that is subsisting and valuable immediately before the commencement unless the person who by virtue of the commencement becomes entitled to restrain the fixation or reproduction of the performances agrees to pay such compensation as the parties agree, or failing such agreement, as the Copyright Tribunal may determine.

Acts infringing rights in performances

7. (1) The provisions of Part III as to the acts constituting an infringement of the rights conferred by that Part apply only in relation to acts done after commencement; the provisions of the Copyright Ordinance continue to apply in relation to acts done on or after 20 December 1996 and before commencement.

(2) 在成文法則、文書或其他文件中，凡提述表演者的權利或有權利存在的表演，而該等權利或表演因本條例便會解釋為提述《版權條例》所指的表演者的權利下，則在延續該成文法則、文書或其他文件的效力所需的範圍內，該項提述須解釋為（或按個別情況的需要而須解釋為包括）本條例所指的表演者的權利或根據本條例而有權利存在的表演。

(3) 凡根據被本條例廢除的條文或為施行該等條文而作出任何事情（包括訂立附屬法例），或凡任何事情具有如此作出的效力則該等事情在其是根據相應的新的表演權利條文而作出的或為施行相應的新的表演權利條文而作出一樣的情況下，具有效力。

(4) 在文意許可的情況下，在本條例或任何其他成文法則、文書或文件中，凡提述（明示或隱含）新的表演權利條文的任何條文，即就生效之前的時間、情況及目的而解釋為包括提述相應的較早時的條文。

(5) 在成文法則、文書或其他文件中，凡提述（明示或隱含）被本條例廢除的條文，在延續該成文法則、文書或其他文件條文的效力所需的範圍內，該項提述須解釋為提述本條例的相應條文。

(6) 本段條文在任何特定的過渡性條文或保留條文及本條例作出的任何明示修訂規限下具有效力。

在表演中的權利的存在

5. (1) 如符合以下說明，則第 III 部所賦予的權利在生效之後存在於現存的表演——

(a) 該表演曾是《版權條例》所指的合資格的表演，或假使該表演是在生效之後作出的，便會是合資格的表演；及

(b) (i) 新的表演權利條文在某公曆年開始生效，而該表演並非在該公曆年的第一天前的 50 年之前作出的；或

(ii) 該現存的表演是在某一公曆年作出的，而新的表演權利條文是在另一公曆年開始實施的，且該表演的錄製品在自該某一公曆年年終起計的 50 年之內發行，則該發行須並非在該另一公曆年的第一天前的 50 年之前作出的。

(2) 第 III 部所賦予的現存的表演的權利持續存在，直至該等表演的該等權利按照本條例第 214 條屆滿的日期為止。

反對的權利

6. 凡任何人在生效之前，就錄製任何表演或複製任何錄製品而招致大量開支或法律責任，而招致的方式在當時是合法的，又或任何人在生效之前，為上述錄製或複製或為達致上述錄製或複製而招致大量開支或法律責任，而在當時，若非生效該錄製或複製本會是合法的，則本條例既不削減亦不損害任何因上述行動而產生的或與上述行動相關的任何權利或權益，但該權利或權益須在緊接生效前已存在兼有價值；但如憑藉生效而有權限制錄製或複製的人同意支付補償（數額由雙方協議，如無協議，則由版權審裁處裁定），則屬例外。

侵犯在表演中的權利的作為

7. (1) 第 III 部關於構成侵犯該部所賦予的權利的作為的條文，只就在生效之後作出的作為而適用；《版權條例》的條文持續就在 1996 年 12 月 20 日或之後但在生效之前作出的作為而適用。

(2) For the purposes of section 229 of this Ordinance (meaning of “infringing fixation”) the question whether the fixation constituted an infringement of performers’ rights, or would have done if the performance had been given in Hong Kong, is to be determined, in relation to a performance given on or after 20 December 1996 and before commencement, by reference to the Copyright Ordinance.

Remedies for infringement

8. Section 228 of this Ordinance (delivery up of infringing fixations) applies to infringing fixations made before and after commencement; section 32 of the Copyright Ordinance does not apply after commencement except for the purposes of proceedings begun before commencement.

Ships, aircraft and hovercraft

9. Section 235 of this Ordinance (ships, aircraft and hovercraft registered in Hong Kong) does not apply in relation to anything done before commencement.

SCHEDULE 4

[s. 280 & Schs. 2 & 3]

CONSEQUENTIAL AMENDMENTS

Specification of Public Offices

1. Schedule amended

The Schedule to the Specification of Public Offices (Cap. 1 sub. leg.) is amended in the entry relating to the Commissioner of Customs and Excise by repealing “Copyright Ordinance (Chapter 39), sections 5(4) and 7.” and substituting “Copyright Ordinance (92 of 1997).”.

Rules of the Supreme Court

2. Case stated under section 176 of the Copyright Ordinance

Order 93, rule 14 of the Rules of the Supreme Court (Cap. 4 sub. leg.) is amended—

- (a) in paragraph (1), by repealing “the Performing Right Tribunal” and “section 30 of the Copyright Act, 1956 (1956 c. 74 U.K.), as extended to Hong Kong by the Copyright (Hong Kong) Orders 1972 and 1979 (S.I. 1972/1724 U.K.; S.I. 1979/910 U.K.)” and substituting “the Copyright Tribunal” and “section 176 of the Copyright Ordinance (92 of 1997)” respectively;
- (b) in paragraph (3), by repealing “the Performing Right Tribunal” and substituting “the Copyright Tribunal”.

Pesticides Ordinance

3. Trademarks, trade descriptions, patents and copyright not affected

Section 20 of the Pesticides Ordinance (Cap. 133) is amended by repealing “the Copyright Ordinance (Cap. 39)” and substituting “the Copyright Ordinance (92 of 1997)”.

(2) 為施行本條例第 229 條 (“侵犯權利的錄製品”的涵義)，就在 1996 年 12 月 20 日或之後但在生效之前作出的某一表演而進行錄製會否構成對表演者權利的侵犯或假使該某一表演在香港作出並予以錄製是否會構成對表演者權利的侵犯此一問題，須參照《版權條例》而裁定。

侵犯權利的補救

8. 本條例第 228 條 (交付侵犯權利的錄製品) 適用於在生效之前及之後製作的侵犯權利的錄製品；《版權條例》第 32 條在生效之後並不適用，但就在生效之前展開的法律程序而言，則屬例外。

船舶、航空器及氣墊船

9. 本條例第 235 條 (在香港註冊的船舶、航空器及氣墊船) 不就在生效之前作出的任何事情而適用。

附表 4

[第 280 條及附表 2 及 3]

相應修訂

《公職指定》

1. 附表修訂

《公職指定》(第 1 章，附屬法例) 的附表現予修訂，在關於香港海關總監的項目中，廢除“版權條例(第 39 章)，第 5(4) 及 7 條。”而代以“版權條例(1997 年第 92 號)。”。

《最高法院規則》

2. 根據《版權條例》第 176 條作出的案件呈述

《最高法院規則》(第 4 章，附屬法例) 第 93 號命令第 14 條規則現予修訂——

- (a) 在第 (1) 款中，廢除“演藝權利審裁處”及“《1956 年版權法令》(1956 c. 74 U.K.) (已藉 1972 年及 1979 年的《版權(香港)命令》(S.I. 1972/1724 U.K.; S.I. 1979/910 U.K.) 而擴及香港) 第 30 條”而分別代以“版權審裁處”及“《版權條例》(1997 年第 92 號) 第 176 條”；
- (b) 在第 (3) 款中，廢除“演藝權利審裁處”而代以“版權審裁處”。

《除害劑條例》

3. 商標、商品說明、專利權及版權不受影響

《除害劑條例》(第 133 章) 第 20 條現予修訂，廢除“《版權條例》(第 39 章)”而代以“《版權條例》(1997 年第 92 號)”。

Customs and Excise Service Ordinance

4. Ordinances referred to in sections 17 and 17A

Schedule 2 to the Customs and Excise Service Ordinance (Cap. 342) is amended by repealing “Copyright Ordinance (Cap. 39)” and substituting “Copyright Ordinance (92 of 1997)”.

Director of Intellectual Property (Establishment) Ordinance

5. Schedule amended

Schedule 2 to the Director of Intellectual Property (Establishment) Ordinance (Cap. 412) is amended by adding—

“3. Registrar of Copyright Licensing Bodies”.

Registered Designs Ordinance

6. Interpretation

Section 2(1) of the Registered Designs Ordinance (64 of 1997) is amended in the definition of “artistic work” by repealing “Part I of the Copyright, Designs and Patents Act 1988 (1988 c. 48 U.K.)” and substituting “Part II of the Copyright Ordinance (92 of 1997)”.

《香港海關條例》

4. 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，廢除“《版權條例》(第 39 章)”而代以“《版權條例》(1997 年第 92 號)”。

《知識產權署署長(設立)條例》

5. 修訂附表

《知識產權署署長(設立)條例》(第 412 章) 附表 2 現予修訂，加入——

“3. 版權特許機構註冊處處長”。

《註冊外觀設計條例》

6. 釋義

《註冊外觀設計條例》(1997 年第 64 號) 第 2(1) 條現予修訂，在“藝術作品”的定義中，廢除“《1988 年版權、外觀設計及專利法令》(1988 c. 48 U.K.) 第 I 部中“artistic work””而代以“《版權條例》(1997 年第 92 號) 第 II 部中“藝術作品””。

SCHEDULE 5

[s. 281 & Schs. 2 & 3]

REPEALS

Enactment	Extent of repeal
1. Copyright Ordinance (Cap. 39)	The whole Ordinance
2. Copyright (Notice of Publication) Regulations (App. I, p. AK1)	The whole Regulations
3. Copyright (Hong Kong) Orders 1972 to 1990 (App. III, p. DD1)	All the Orders
4. Copyright (International Organizations) Order, 1957 (S.I. 1957 No. 1524 U.K.)	In so far as the Order forms part of the law of Hong Kong
5. Copyright (Broadcasting Organizations) Order, 1961 (S.I. 1961 No. 2460 U.K.)	In so far as the Order forms part of the law of Hong Kong
6. Copyright (Computer Software) (Extension to Territories) Order 1987 (S.I. 1987 No. 2200 U.K.)	In so far as the Order forms part of the law of Hong Kong
7. Copyright (Taiwan) Order 1990 (L.N. 205 of 1990)	The whole Order
8. Copyright (Application to Other Countries, Territories or Areas) Regulation (L.N. 312 of 1996)	The whole Regulation
9. Copyright (Designation of Qualifying Countries, Territories or Areas) Regulation (L.N. 313 of 1996)	The whole Regulation

附表 5

[第 281 條及附表 2 及 3]

廢除

成文法則	廢除的範圍
1. 《版權條例》(第 39 章)	整條條例
2. 《版權(發表的通知)規例》(附錄 I AK1 頁)	整條規例
3. 《1972 年至 1990 年版權(香港)命令》(附錄 III DD1 頁)	所有命令
4. 《1957 年版權(國際組織)命令》(S.I. 1957 No. 1524 U.K.)	該命令屬香港法律一部分的範圍
5. 《1961 年版權(廣播組織)命令》(S.I. 1961 No. 2460 U.K.)	該命令屬香港法律一部分的範圍
6. 《1987 年版權(電腦軟件)(延伸適用於屬土)命令》(S.I. 1987 No. 2200 U.K.)	該命令屬香港法律一部分的範圍
7. 《1990 年版權(台灣)命令》(1990 年第 205 號法律公告)	整條命令
8. 《版權(對其他國家、領域或地區的適用範圍)規例》(1996 年第 312 號法律公告)	整條規例
9. 《版權(指定合資格國家、領域或地區)規例》(1996 年第 313 號法律公告)	整條規例