

## **Hong Kong's Amended Copyright Law – New copyright exemption for persons with a print disability**

The Copyright (Amendment) Ordinance 2007 (the “Ordinance”) was enacted on 6 July 2007. This information sheet highlights the new amendments relating to persons with a print disability.

The new amendments introduce a **new copyright exemption** for persons with a print disability. With effective from 6 July 2007, it is not a copyright infringement if **a person with a print disability** and **relevant welfare organizations or non-profit making schools** (referred to as “specified bodies” in the Ordinance) make copies of a copyright work in specialized format (e.g. Braille, large-print, sound recording, or electronic version) to facilitate the access to the work by persons with a print disability, provided that the conditions specified in the Ordinance are fulfilled.

### **1. Who may benefit from this new copyright exemption?**

A “person with print disability” refers to someone who is –

- (a) blind;
- (b) visually impaired to the extent that his visual function cannot be improved by the use of corrective lenses (such as glasses) to a level that would normally be acceptable for reading without a special level or kind of light;
- (c) physically unable to hold or manipulate a book; or
- (d) physically unable to move or focus his eyes to the extent that would normally be acceptable for reading.

### **2. What is the scope of the exemption?**

(a) **If a person with a print disability –**

- possesses a copy of a copyright work; and
- cannot access the copy just as people without the disability;

**the following acts can be exempted –**

- he makes a **single** accessible copy (i.e. a copy in specialized format which facilitates the access to the copyright work, e.g. a Braille, large-print or sound recording) for his **personal use**;
  - anyone makes a **single** accessible copy on behalf of the person with a print disability for the latter’s **personal use**. The maker may charge a sum for the copy but the sum should not exceed the cost of making and supplying the copy.
- (b) This exemption is also applicable to the making of accessible copies by **relevant welfare organizations and non-profit making schools** for persons with a print disability. Please see below for the details of

the exemption.

### **3. What are the conditions for the above exemption to apply?**

One may benefit from the above exemption if the following conditions are fulfilled –

- (a) the master copy possessed by the person with a print disability or the welfare organization or school is a **genuine copy**;
- (b) if the master copy is a musical work or a dramatic work, the making of an accessible copy **does not involve recording a performance of the work**;
- (c) at the time when the accessible copy is made, the maker is satisfied, after **making reasonable enquiries**, that copies in a form that is accessible to the person with a print disability cannot be obtained at a reasonable commercial price;
- (d) an accessible copy **does not include** changes which are unnecessary to overcome problems caused by a print disability; and
- (e) an accessible copy **does not** subject the copyright work to derogatory treatment (i.e. the treatment will not distort or mutilate the work, or be prejudicial to the honour or reputation of the author).

### **4. What kind of organizations may benefit from the exemption?**

Eligible Organizations include –

- (a) government school;
- (b) non-profit making school (which is exempted from tax under section 88 of the Inland Revenue Ordinance);
- (c) school receiving direct recurrent subvention from the Government; or
- (d) non-profit making organization which is charitable or concerned with the advancement of welfare for persons with a print disability.

### **5. What is the scope of the exemption for welfare organizations and schools?**

If a welfare organization or school –

- possesses a copy of a copyright work; and
- persons with print disability cannot access this copy just as people without the disability;

**the following acts can be exempted –**

- the welfare organization or school makes for persons with print disability or supply to them accessible copies for their personal

use, provided that the conditions referred to in Part 3 are fulfilled. The organization or school may charge a sum for the accessible copies but the sum should not exceed the cost of making and supplying the copies.

- the welfare organization or school may **possess** an intermediate copy (which is **necessarily created** during the production of accessible copies), or **lend** or **transfer** the intermediate copy to another welfare organization or school which is eligible to make accessible copies. The welfare organization or school may charge a sum for lending or transferring the intermediate copy but the sum should not exceed the cost of lending or transferring the copy.
- the welfare organization or school may **possess** an intermediate copy **only for the purpose of producing further accessible copies**. The welfare organization or school must destroy the intermediate copy within 3 months after the intermediate copy is no longer required for the purpose.

## **6. What are the duties that welfare organizations and schools should fulfill in order for the above exemption to apply?**

### **(a) Duty to notify the copyright owner**

When a welfare organization or school makes or supplies accessible copies, or lends or transfers an intermediate copy –

- it must **notify** the copyright owner of its intention or of its acts within a reasonable time either before or after such acts, unless it has failed to ascertain the identity and contact details of the copyright owner after making **reasonable enquiries**.

### **(b) Duty to keep record**

After the making or supplying of accessible copies, or lending or transferring of an intermediate copy, a welfare organization or school should –

- **make a record** as soon as practicable of any accessible copy made or supplied, or of any intermediate copy lent or transferred;
- retain such record for at least **3 years**; and
- allow the relevant copyright owner, on giving reasonable notice, to inspect and make copies of the record at any reasonable time.

Such record should include the following information –

- (a) the **date** of making, supplying, lending or transferring the copy;
- (b) the **form** of the copy (e.g. Braille, large-print, etc.); and
- (c) the **title, publisher and edition** of the master copy.

- (d) the **total number** of accessible copies made, if more than one; if the accessible copy is made for or supplied to a body or a class of persons, the name of the body or a description of the class of persons.
- (e) the **name of the welfare organization or school to which the intermediate copy is lent or transferred.**

## **7. Can I sell an accessible copy?**

Any selling or letting for hire of an accessible copy (otherwise than individual or organization which makes accessible copies for persons with print disability charging a sum not exceeding the cost of making and supplying the copies) is illegal and will be treated as dealing with an infringing copy of a copyright work.

For details of the Ordinance, please refer to the website of  
Intellectual Property Department  
<http://www.ipd.gov.hk> .

Please see FAQs at:

- [http://www.ipd.gov.hk/eng/intellectual\\_property/copyright/faqs\\_copyright\\_exemptions\\_e.pdf](http://www.ipd.gov.hk/eng/intellectual_property/copyright/faqs_copyright_exemptions_e.pdf) (English version)
- [http://www.ipd.gov.hk/chi/intellectual\\_property/copyright/faqs\\_copyright\\_exemptions\\_c.pdf](http://www.ipd.gov.hk/chi/intellectual_property/copyright/faqs_copyright_exemptions_c.pdf) (Traditional Chinese version)

Commerce and Economic Development Bureau  
Intellectual Property Department