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

Please see FAQs at:
- http://www.ipd.gov.hk/eng/intellectual_property/copyright/faqs_copyright_exemptions_e.pdf (English version)

Commerce and Economic Development Bureau
Intellectual Property Department