

**Copyright Ordinance (Cap. 528)**  
**Use of exception under section 40CA by a specified body for export or supply to an authorized entity for persons with a print disability<sup>1</sup>**

*This checklist is for general reference and self-assessment only and does not constitute legal advice. The Government of the Hong Kong Special Administrative Region does not accept any liability for any loss or damage caused to any person relying on information given or omitted in the checklist.*

Title of copy of work <sup>2</sup> (i.e. master copy) for making an accessible copy for export or supply to an authorized entity out of jurisdiction	
Copyright owner of the work	

**1. Eligibility to use the exception under section 40CA**

To be eligible to use the exception, as the maker, exporter and/or supplier of an accessible copy of the master copy, you must be a “specified body”, i.e. you are –

- a Government school;
- a school exempt from tax under section 88 of the Inland Revenue Ordinance (Cap.112);
- a school receiving direct recurrent subvention from the Government; or
- an organization that is not established or conducted for profit, **and** has a main object or a main function that is charitable or otherwise concerned with the advancement of welfare for persons with a print disability.

If none of the above conditions applies, ***you are prima facie NOT eligible to use the exception. Please seek independent legal advice on your eligibility.***

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<sup>1</sup> The Copyright (Amendment) Ordinance 2020 (the Amendment Ordinance), which came into effect on 26 June 2020, has enhanced the copyright exceptions relating to persons with a print disability in the Copyright Ordinance (Cap. 528) to bring them into line with the standards under the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (“Marrakesh Treaty”). For details on how the new exceptions or permitted acts in the Copyright Ordinance allowing the production of specially adapted copies (accessible copies) by specified bodies for export or supply to authorized entities outside Hong Kong are provided, see the [Amendment Ordinance](#) and the [Copyright Ordinance \(Cap. 528\)](#).

<sup>2</sup> Section 40CA of Cap. 528 covers the whole or part of a literary, dramatic, musical or artistic copyright work (or its audio form, e.g. an audiobook).

## 2. Export or supply of an accessible copy

You make an accessible copy for export or supply to an authorized entity outside Hong Kong, and the authorized entity is –

- in a jurisdiction that is a member of the World Trade Organization<sup>3</sup> or a contracting party to the Marrakesh Treaty<sup>4</sup>; **and**
- not established or conducted for profit **and** has a main object or main function that is charitable, or otherwise concerned with the advancement of welfare for persons with a print disability.

If none or only one of the above conditions applies, *you are prima facie NOT eligible to use the exception. Please seek independent legal advice on your eligibility.*

## 3. Persons with a print disability

You make, export and/or supply an accessible copy of the master copy for the personal use by a person with a print disability, i.e. a person who –

- is blind;
- is 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;
- is unable, through physical disability, to hold or manipulate a book;
- is unable, through physical disability, to focus or move his eyes to the extent that would normally be acceptable for reading; or
- has a perceptual or reading disability (including dyslexia) which cannot be improved to give him visual function substantially equivalent to that of a person who has no such disability, such that he is unable to read to substantially the same degree as a person who has no such disability.

If none of the above conditions applies, *you are prima facie NOT eligible to use the exception. Please seek independent legal advice on your eligibility.*

## 4. Status of the master copy

- You possess or have lawful access to the master copy;
- the master copy is a genuine copy;
- the master copy is not accessible to persons with a print disability;

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<sup>3</sup> For information on the World Trade Organization, see <https://www.wto.org/>.

<sup>4</sup> The Marrakesh Treaty is an international agreement concluded under the auspices of the World Intellectual Property Organization. Its main goal is to facilitate and enhance access to copyright works in accessible forms for persons with a print disability. The Marrakesh Treaty entered into force in China on 5 May 2022, which also applies to the Hong Kong Special Administrative Region.

- the master copy does *not* include a sound recording that comprises only of:
  - ◆ a performance of the whole or part of a musical work or a dramatic work, or
  - ◆ a performance of music in which words are spoken, or are sung, incidentally to or in association with the music (e.g. a CD of a singer singing pop songs); and
- if the master copy is the whole or part of a musical or dramatic work, the making of an accessible copy does *not* involve recording a performance of the work or part of the work.

#### 5. **Obligations on the maker/exporter/supplier of the accessible copy**

- Before making, exporting and/or supplying an accessible copy from the master copy (or another accessible copy from an accessible copy made pursuant to section 40C of the Copyright Ordinance) to an authorized entity, you –
  - (i) have obtained the authorized entity’s confirmation that *no copy* of the work in a form that is accessible to persons with a print disability can be obtained at a reasonable commercial price in the entity’s jurisdiction; and
  - (ii) do not know, and do not have reasonable grounds to believe, that the accessible copy would be used otherwise than by persons with a print disability for their personal use. For example, you may seek confirmation from the authorized entity that the accessible copy would only be provided to persons with a print disability for their personal use;
- the sum, if any, charged for making, exporting or supplying the accessible copy does not exceed the cost incurred in making, exporting and/or supplying that copy;
- within a reasonable time before or after making, exporting or supplying the accessible copies, notify the copyright owner of such making, exporting or supplying (not applicable if the identity and contact details of the copyright owner cannot be ascertained after making reasonable enquiries);
- after exporting or supplying the accessible copy, make a record of such exporting or supplying as soon as practicable. Such record must include -
  - (i) the date on which you sent the accessible copy to the authorized entity;
  - (ii) the form of the accessible copy;
  - (iii) the title, publisher and edition of the master copy or, if the title, publisher or edition is not known, a description of the master copy; and
  - (iv) the name of the authorized entity to which the accessible copy is exported or supplied;
- retain such record for at least 3 years; and
- allow the copyright owner or a person acting for him, on giving reasonable notice, to inspect and make copies of the record at any reasonable time.

**\*\* WARNING \*\***

***If an accessible copy of the work made, exported or supplied in full compliance of all the conditions stated in section 40CA of the Copyright Ordinance (Cap. 528) is subsequently dealt with (i.e. sold, let for hire, or offered or exposed for sale or hire), the accessible copy is to be treated as an infringing copy.***