

Copyright Ordinance (Cap. 528)
**Use of exception under section 40C by a specified body for
persons with a print disability¹**

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 ² (i.e. master copy) for making and/or supplying an accessible copy	
Copyright owner of the work	

1. Eligibility to use the exception under section 40C

To be eligible to use the exception, as the maker 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.***

¹ 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. For details on how the exceptions or permitted acts in the Copyright Ordinance allowing the production and supply of specially adapted copies (accessible copies) for the personal use by persons with a print disability are enhanced, see the [Amendment Ordinance](#) and the [Copyright Ordinance \(Cap. 528\)](#).

² Section 40C 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. Persons with a print disability

You make and/or supply an accessible copy of the master copy for the personal use of 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.*

3. 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;
- 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.

4. Obligations on the maker/supplier of the accessible copy

- Before making and/or supplying an accessible copy from the master copy (or further accessible copies made from the accessible copy), you have made reasonable enquiries and are satisfied 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;
- the sum, if any, charged for making and supplying the accessible copy does not exceed the cost incurred in making and/or supplying that copy;
- within a reasonable time before or after making or supplying the accessible copies, notify the copyright owner of such making or supplying (not applicable if the identity and contact details of the copyright owner cannot be ascertained after making

- reasonable enquiries);
- after making or supplying the accessible copy, make a record of such making or supplying as soon as practicable. Such record must include -
 - (i) the date on which the accessible copy is made or supplied;
 - (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;
 - (iv) 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; and
 - (v) if more than one copy of the accessible copy is made or supplied, the total number of the accessible copies;
 - 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 or supplied in full compliance of all the conditions stated in section 40C 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.