



Intellectual Property Department
The Government of the HKSAR

Attn. Ms Joyce Poon

15 August 2017

Dear Sirs

Review of Copyright Exceptions for Persons with a Print Disability - Consultation Paper

We refer to the invitation from the Intellectual Property Department to participate in a consultation exercise regarding proposed amendments to the Copyright Ordinance (Cap. 528) which is intended to align Hong Kong's legislation with the Marrakesh Treaty to facilitate access to published works for persons who are blind, visually impaired, or otherwise print disabled.

The Hong Kong Institute of Trade Mark Practitioners supports any proposals towards improving access to published works to all and the proposed changes to the Copyright Ordinance are welcomed. Our response to specific questions raised in the *Review of Copyright Exceptions for Persons with a Print Disability - Consultation Paper* are set out below.

Following your numbering:-

The scope of "beneficiary person"

14.1 Should the Copyright Ordinance be amended to expand the scope of "beneficiary person(s)" in line with Article 3 of the Marrakesh Treaty so that people with a "perceptual or reading disability" would be covered by the relevant exception?

- Yes

14.2 Is the generic reference to "perceptual or reading disability" clear enough for the operation of the exceptions? If not, how should the scope of "beneficiary person(s)" be better defined in the Hong Kong context? Is it necessary or practical to, say, list each specific type of perceptual or reading disability?

- Yes. The description "perceptual or reading disability" incorporates a degree of flexibility sufficient to cover new or reclassified types of perceptual or reading disability which may otherwise be excluded if specific types of disability were to be defined.

The scope of "specified body"

17.1 Should the definition of "specified body" in section 40A of the Copyright Ordinance be expanded? If so, what other kinds of organizations should be covered for the objective of aligning with the Marrakesh Treaty?

- The existing definition is sufficient.

Scope of works

20.1 Should the scope of the exceptions be amended in line with the Marrakesh Treaty to cover copyright works that are published or otherwise made publicly available in any media?

- Yes

Accessible format copy

23.1 Are there any formats which should be added to the definition of “accessible copies” in section 40F(3) of the Copyright Ordinance?

- Not at present.

The acts which could be performed by persons with a print disability and/or specified bodies

26.1 Do you agree that amendment should be made to clarify that supply of accessible copies to beneficiaries may include distribution as well as by way of making available to the public?

- Yes

26.2 Is there a need to provide for an additional exception to the right of public performance in order to facilitate access to works for beneficiary persons? If so, what are the circumstances justifying that such an exception is required?

- No comment.

Conditions to be met under the existing provisions

28.1 Do you agree that the current conditions (such as the requirement to make reasonable enquiries as to “commercial availability” and to notify the copyright owner of intention to make or supply accessible copies) for utilizing the exceptions provided under the Copyright Ordinance should be retained?

- Yes

28.2 If not, in what ways can we modify the terms of the conditions or requirements before one may invoke the exceptions and why?

The application of anti-circumvention of technological measures provisions

31.1 Whether persons with a print disability or the specified bodies have in practice any difficulties in gaining access to copyright works for the purpose of making accessible copies? If so, please briefly explain the problems encountered.

- We are not in a position to provide such information.

31.2 Whether the above difficulties could be resolved by non-legislative means such as requesting the copyright owner concerned to provide copies of the works for making the accessible copies?

- No comment.

31.3 If non-legislative means are not desirable, whether the Copyright Ordinance should be amended to exempt print disability-related exceptions from technological protection measures provisions and if so, under what conditions should the persons with a print disability (or the specified bodies) be allowed to use the exception?

- We agree with the proposal to provide suitable exceptions for persons with a print disability (or the specified bodies) to circumvent technological protection measures if the copyright owner fails to provide access to the works.

Cross-border exchange of accessible copies

34.1 Do you agree that cross-border exchange of accessible copies should be permitted? Should any additional conditions be imposed in relation to cross-border exchange of accessible copies, so as to strike a reasonable balance between the rights of copyright owners and the users, and to avoid abuse?

- Yes.
- Yes.

We are grateful for the opportunity to participate in the consultation and look forward to receiving the IPD's comments on the progress of the amendments.

Yours faithfully



Davina Lee

President

The Hong Kong Institute of Trade Mark Practitioners