

Review of Certain Provisions of  
**Copyright Ordinance**

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## SUMMARY

The Government would like to hear the views of the public on the end-user criminal liability, copyright exemption and a number of other provisions in the Copyright Ordinance as outlined in this consultation document. In summary, we would like to invite views on –

### 1. Copyright Exemption

- (a) whether a quantitative test should be introduced in the Hong Kong Copyright Ordinance to determine if the act of copying for research or private study purposes is fair dealing;
- (b) whether a non-exhaustive regime of copyright exemption based on the principles of fair dealing should be introduced in Hong Kong or whether we should maintain the current approach of exhaustively listing all the copyright exempted acts;
- (c) if it is considered that a non-exhaustive regime based on the principles of fair dealing should be adopted, what the essential elements should be; and
- (d) if it is considered that the current approach of exhaustively listing all the exemptions should be maintained, whether and how the current list of exemptions should be expanded bearing in mind a possible expansion in the scope of end-user criminal liability (see Chapter 2).

### 2. Scope of Criminal Provisions Related to End-user Piracy

Whether and how the scope of end-user criminal liability should be expanded to cover more types of copyright work in addition to computer programs, movies, television dramas and musical recordings.

### 3. End-user Liability Associated with Parallel Imported Copies

- (a) whether the existing criminal and civil liability pertaining to parallel imported copies should be relaxed;

- (b) the extent to which the liability should be relaxed; and
- (c) whether the existing period during which parallel imported copies will attract criminal and civil liability should be shortened, and if so, for how long.

4. Defence for Employees against End-user Criminal Liability

- (a) whether specific defence should be provided to employees found in possession of infringing copies provided by their employers for use in the course of their employment;
- (b) the proposed employee defence as described in paragraph 4.2 of Chapter 4;
- (c) the suggestion of some copyright owners in the software industry as described in paragraph 4.4 of Chapter 4; and
- (d) other means to address the concerns about the impact of the end-user criminal liability on employees required by their employers to use infringing copies.

5. Proof of Infringing Copies of Computer Programs in End-user Piracy Cases

How the proof of infringing copies of computer programs may be facilitated in order to enhance effective enforcement of the end-user criminal liability provisions.

6. Circumvention of Technological Measures for Copyright Protection

- (a) whether criminal sanctions against activities under section 273 of the Copyright Ordinance as set out in paragraph 6.2 of Chapter 6 should be introduced;
- (b) whether the scope of section 273 should be expanded to cover devices or means designed to circumvent access control measures, and whether criminal sanctions should be introduced for the expanded section 273; and

- (c) whether civil remedies and criminal sanctions against the act of circumventing copy-protection measures and access control measures should be introduced.

7. Rental Rights for Films

Whether the Copyright Ordinance should be amended to provide rental rights for copyright owners of films which include musical visual recordings and whether such rights should attract criminal sanctions.

8. Issues Relating to the World Intellectual Property Organization Internet Treaties

- (a) whether we should grant commercial rental rights to authors of underlying works in phonograms;
- (b) whether we should grant moral rights to performers with regard to their live aural performances or performances fixed in phonograms;
- (c) whether we should grant commercial rental rights to performers over their performances fixed in phonograms; and
- (d) whether we should amend the definitions of “performer” and “performance” in the Copyright Ordinance to make certain that they cover artistic works and expressions of folklore.