



## **The Hong Kong Archives Society**

### **Submission**

### **Public Consultation on Proposed Subsidiary Legislation under the Copyright Ordinance**

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**By email:**

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## About Hong Kong Archives Society

The Hong Kong Archives Society ([www.archives.org.hk](http://www.archives.org.hk)) was established in 1999 and is the only professional organization for archivists and archive workers in Hong Kong.

### General Comments

The Society welcome the consultation and the opportunity to present our comments on these proposed changes as below:

1. We generally welcome the expansion of permitted acts under sections 47 to 53.
2. We would like the Chinese term for "Archives" to be "檔案館", not "檔案室" as in the consultation paper. There are a number of archives in Hong Kong that have significant collections which are important to their parent institutions and sometimes the general public, managed by professional archivists. Some even boast engaging and educational history galleries and offer reference services. They are a far cry from rooms which only store records and other materials, which is what the term "檔案室" may convey. The term "檔案館" also align better with the Chinese terms for libraries and museums ("圖書館", "博物館")
3. We would like to see the provisions of s47, s48 and s50 under "Proposed Specifications for Libraries" (p. 14-16 of the Consultation Paper) be expanded to include archives as well. Nowadays archives quite commonly no longer only hold archival materials, but rather hold a mixed collection with published and unpublished materials. The permitted acts for libraries under these four sections are related to published materials and therefore should be applicable for archives as well.
4. In addition, we question the logic in Para 3.4 of the "Remarks on 'Libraries', 'Museums' and 'Archives' which are 'Conducted for Profit'" (p. 24-25 of the Consultation Paper) which extends the term "conducted for profit" to "*institutions that are either administered by or form part of a profit-making entity **given that such institutions form a part of the entity's profit-making activities***" (Italics added)

Quite often private archives in Hong Kong are established and operated on a non-profit basis, even though they form part of, or administrated by, commercial entities. Some business archives in Hong Kong and overseas maintain and make available their archives as part of their "Environment, Sustainability and Governance" (ESG) effort. They remain outside of the parent entities' profit-making activities, and the 'logical extension' in Para 3.4 cannot be universally applied. The proposal in Para 3.5 (b) therefore would potentially put them into the profit-making class, denying them the permitted acts for serving the academia.

These archives, including the major leading corporate archives in Hong Kong, have been offering archive services not for any profit and over the years contributed significantly to academic research locally and internationally with their unique collections. A definition without Para 3.5(b) can bring clarity to this class of archives and ensure their continuous contributions towards academic research.

5. Regarding preservation activities in archives which form part of, or are administrated by, commercial entities, we are concerned that there are unjustified restrictions for them.

It is not uncommon for this type of archives to receive funding from their profit-making administrative parents or associated entities for preservation projects. If this definition were to be applied in s50, s53 and s246 (supplying copies to other libraries, copying for preservation/replacement and copying items of cultural significance), this type of archives cannot be qualified to receive copies for replacement and preservation, and hence copies are denied of good preservation that could be afforded by these relatively resourceful institutions.

We consider that using signed declarations such as required for s38 by recipient archives will be sufficient to stall them from receiving copies for profit-making purposes.

6. We propose that the Ordinance give a clear provision for the duration of copyright for unpublished materials and for orphan works. In order to facilitate research and study, we propose that these two types of materials be considered to have comparable duration of copyright as published materials, i.e. death of the author plus 50 years when there are known personal authors; 50 years from the time the work was produced or written if there are no personal authors, if the

authors are no longer traceable, or if there are multiple authors (as in the case of mass-produced publications such as magazines and newspapers).

### **Specific Question: Reasonable proportion**

1. While the stipulation of 10% or thereabouts, for a printed book, is a workable concept for staff in archives, and an easy concept for users to follow, 10% in an archival collection is difficult to implement. Archival collections typically consist of a great variety of materials including but not limited to paper documents, audio-visual materials, posters and artefacts.
2. Since the purpose of having these exceptions to copy materials is to protect the economic and other interests of creators, the Society recommend that reasonable proportion for copying of archival materials be at the discretion of the archivist, primarily following donors' wishes and instructions.

### **Specific Question: Permanent Collection**

1. We consider this definition unnecessary. Even though archival materials are generally unique, from time to time archivists may re-appraise their holdings and decide to de-accession certain materials. The concept of permanent collection does not actually impact on any of the permitted acts.
2. Collections in the custody of archives are governed by various types of deposit agreement with varying terms and conditions with depositors. Although most promise long-term preservation, some was historically termed "permanent loan" which invites the questions on the level of "permanence", and not all are available for loan for other libraries, archives and museums. The proposed definition is narrow and impractical, and will do a disservice to archives rather than providing certainty.