

**The Hong Kong
Institute of
Trade Mark
Practitioners**
香港商標師公會

Registered office
Suite D, 16th Floor
On Hing Building
1 On Hing Terrace
Central, Hong Kong

President
Jacqueline Chu
Vice President
Valerie Suen
Treasurer
Benjamin Choi
Secretary
Loretta Lau
Membership Secretary
Katherine Lai

Tel:	Fax:
2526 6345	2810 0791
3752 2767	3752 3850
2186 1864	3893 0761
2825 9341	2810 0431
2526 6345	2810 0791



22 April 2024

BY EMAIL (libreg_consultation@cedb.gov.hk)

Division 3, Commerce and Economic Development Bureau
23/F, West Wing
Central Government Offices
2 Tim Mei Avenue, Tamar
Hong Kong

Dear Sirs,

Re: Consultation on Proposed Subsidiary Legislation for Specification of Libraries, Museums and Archives and Prescribed Conditions for Certain Permitted Acts under the Copyright Ordinance (Cap. 528)

Background

1. This submission is made by The Hong Kong Institute of Trade Mark Practitioners Limited ("HKITMP"), the membership of which consists of solicitors, barristers, trade mark agents and patent agents, who are principally engaged in trade mark and other Intellectual Property practices. The HKITMP's aim is to protect the interests of trade mark and other Intellectual Property rights owners, for which purpose we are active and in regular liaison with the Intellectual Property Department and other relevant industry bodies.
2. This submission on behalf of the HKITMP has been prepared by the HKITMP Copyright Committee, consisting of Council members who have a particular interest and expertise in copyright. The views expressed are from a legal and policy perspective in our capacity as solicitors and Intellectual Property law practitioners, acting independently without regard to the views of any particular copyright body or organization.

Submission

3. The HKITMP welcomes the Government's proposals to update the provisions facilitating the specified libraries, museums and archives ability to do certain permitted acts during their legitimate day-to-day operations and provision of services. As a general statement, the HKITMP supports all of the proposed provisions, subject to the comments/observations that are made further below.

Section 47 – copying by librarians: articles in periodicals

4. We note that under the existing Libraries Regulations (Schedule 3 and Regulation 6(1)(a)), there is a standardised declaration for libraries etc to follow. However, under the new Regulations the intention is not to prescribe any general form but to simply list down the information which must be included in the declaration and to allow specified libraries to prescribe their own declaration forms.

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5. The HKITMP is of the view that:

- (a) The provision of a standardised form of declaration is extremely helpful particularly to the libraries etc who may feel overwhelmed at the requirement to prepare a form of "declaration" for themselves (which they may consider a legal document requiring specialist skill and knowledge);
- (b) As a standardised form of declaration already exists in the existing Library Regulations, there is no harm to continue the use of that to facilitate implementation of the new Regulations; and
- (c) The new Regulations can simply make it clear that the standardised declaration is a format proposed for guidance only and that libraries etc. are at liberty to prescribe their own declaration forms and/or amend the standardised declaration.

6. Our comments in respect of the declaration applies equally to the Section 52 declaration.

Reasonable proportion of the work – specific question under Section 48

Q1. Should we apply the 10% illustration to the definition of "a reasonable proportion of the work" in favour of the existing "word-counting" approach? Should the deeming approach or the definitive approach be adopted? Alternatively, should we leave the term "reasonable proportion" undefined and determinate on a case by case basis?

7. We note that the Government proposes that not more than ten (10) percent of a published literary, dramatic, musical or artistic work, sound recording or film will be regarded "as a reasonable proportion of a work", and is considering the "deeming approach" as adopted in Singapore, compared to the "definitive approach" adopted in Australia.
8. Whilst we believe the "deeming approach" gives greater flexibility, we believe that it would be helpful if guidance could also be provided in the new Regulations as to any specific factors that would be taken into consideration according to the different types of copyright work. In this regard, where a work is considered to potentially infringe a copyright work, the Court will consider whether the whole or a "substantial part" has been copied, the "substantiality" being a matter of quality and not quantity. It follows, copying 10% of a work could constitute infringement of a substantial part if it is of a particular quality characteristic. Having regard to such principle under copyright law, assistance with assessing the 10% proposed is important.

We can be available to address any queries that the Government may have on the response above.

Yours faithfully,

Jacqueline Chu
President
The Hong Kong Institute of Trade Mark Practitioners