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# Webinar - Copyright Legislation in Hong Kong (Session 2)

Jacqueline Tsang (曾穎愉)

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Associate

+852 2843 4554

Jacqueline.Tsang@mayerbrown.com



# Agenda

1. Part 1: Overview of exemptions to copyright infringement available to NGOs under the Copyright Ordinance (Cap.528)
2. Part 2: Checklist of what an NGO should consider when using copyrighted works
3. Part 3: Specific scenarios applicable to NGOs using copyrighted works in the course of delivering their services



Part 1: Overview of exemptions  
to copyright infringement  
available to NGOs under the  
Copyright Ordinance (Cap.528)  
("CO")

# Categories of copyright work:

- **Literary (文學作品)**
  - Story books
  - Textbooks
  - Software code / computer programs
  - Lyrics of a song

# Categories of copyright work:

- **Artistic (藝術作品)**
  - Photographs
  - Paintings and sculptures
  - Drawings
  - Maps, charts or plans
  - Buildings and construction drawings
  - Any work of 'artistic craftsmanship'



## Categories of copyright work:

- **Musical (音樂作品)**
  - Songs (not including lyrics)
  - Tunes and melodies
  - Compositions
  
- **Dramatic (戲劇作品)**
  - Plays
  - Mimes
  - Dance

# Categories of copyright work:

- **Film (影片)**
  - Films, including their soundtracks
- **Broadcast (廣播)**
  - TV
  - Radio
  - Cable programmes
- **Sound recordings (聲音紀錄)**





# For copyright to subsist in a work

- Work must be:
  - Original (i.e. not copied; skill, judgment and labour)
  - Recorded in material form / fixed form

## Exclusive acts restricted by the copyright:

- A. To copy the work
- B. To issue copies of the work to the public
- C. To rent or lend the work to the public
- D. To perform, share or play the work in public
- E. To broadcast the work
- F. To make an adaptation/ translation of the work (or do A. – E. in relation to an adaptation)
- G. To make the work available

# What is copyright infringement?

- Primary (直接侵犯版權)
  - Exclusive acts committed;
  - No consent from copyright owner
  - “Substantial part” of work; and
  - Does not need to prove knowledge of infringement
- Secondary (間接侵犯版權)
  - Import/export;
  - Possess/sell; or
  - Provide means to make infringing copies; and
  - With knowledge



## Copyright exemptions relevant to NGOs

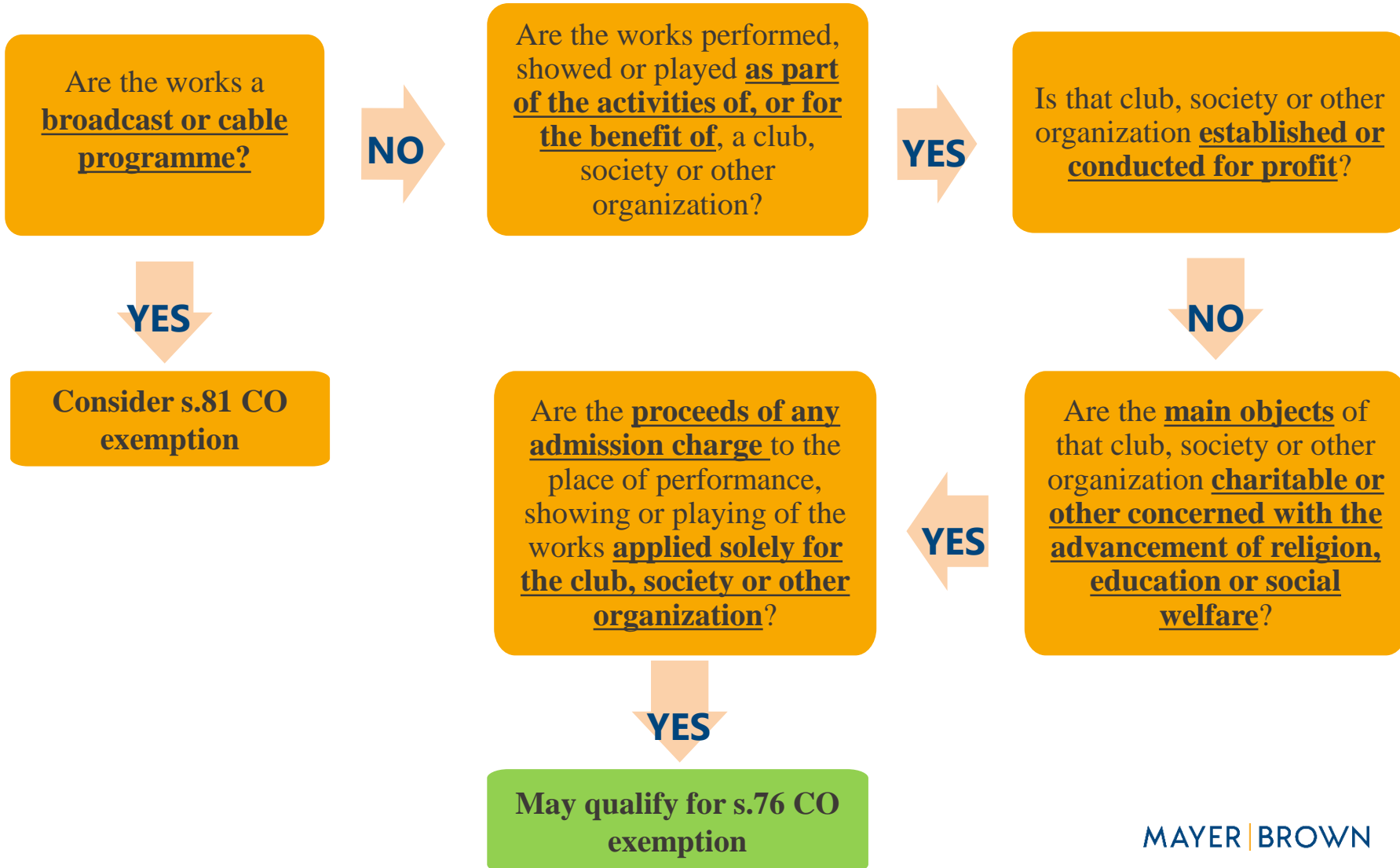
- The contents are intended to provide a general guide to the subject matter only and should not be treated as a substitute for specific advice concerning individual situations.

# Copyright exemptions relevant to NGOs

**s.76 CO – Performance, showing or playing of works (other than a broadcast or a cable programme) for purposes of club, society, etc.**

- Applies to clubs, societies or other organisations which are non-profit and whose main objects are charitable or are otherwise concerned with the advancement of religion, education or social welfare.

# s.76 CO – Performance, showing or playing of works for purposes of club, society, etc.



# Copyright exemptions relevant to NGOs

## **s.81 CO – Free public showing or playing of broadcast or cable programme**

- Applies to broadcast or cable programmes shown to:
  - Residents or inmates of a place operated by a non-profit charitable organisation; or
  - members of a club or society whose main objects are charitable or are otherwise concerned with the advancement of religion, education or social welfare.

# s.81 CO – Free public showing or playing of broadcast or cable programme

Are the works an encrypted broadcast or cable programme?

NO

Has the audience **paid for admission** to the place where the broadcast or programme is seen or heard?

YES

Are the persons admitted as **residents or inmates of the place** which is operated by a charitable organization whose facilities are not provided for profit?

NO

OR

May qualify for s.81 CO exemption

YES

Are the persons admitted as **members of a club or society**, whose **main objects** are **charitable or other concerned with the advancement of religion, education or social welfare**, and where payment is only for membership and provision of facilities for seeing or hearing broadcasts or programmes is **only incidental to the main purposes of the club or society**?

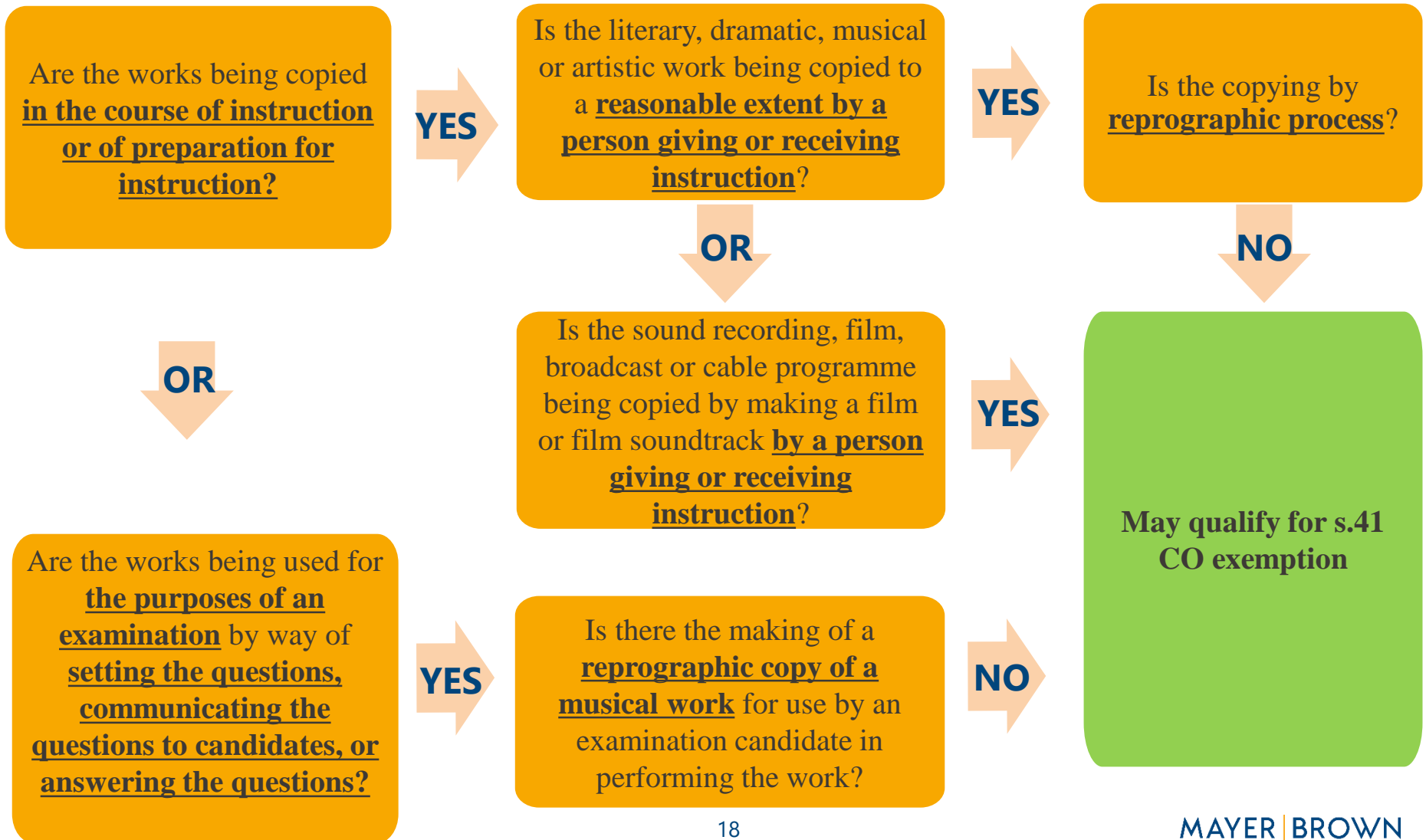


# Copyright exemptions relevant to NGOs

## **s.41 CO – Things done for purposes of instruction or examination**

- Applies to persons giving or receiving instructions (e.g. tutoring services provided by youth organisation).

# s.41 CO – Things done for purposes of instruction or examination



# Copyright exemptions relevant to NGOs

## **s.68 CO – Public reading or recitation**

- Public reading or recitation of **a reasonable extract** from a published literary or dramatic work
  - Applies to everyone.

# s.68 CO – Public reading or recitation of extracts from published works

Is the public reading or recitation a reasonable extract by one person?

**YES**

Is the public reading or recitation accompanied by a sufficient acknowledgment?

**YES**

**May qualify for s.81 CO exemption**

# Copyright exemptions relevant to NGOs

## **s.39 CO – Criticism, review and news reporting**

Criticism, review and news reporting – under fair dealing

- Applies to everyone.

## s.39 CO – Criticism, review and news reporting

Is the dealing with the work “**fair dealing**” – taking into account:

- (a) the **purpose and nature of the dealing**, including whether the dealing is for a non-profit-making purpose and whether the dealing is of a commercial nature;
- (b) the **nature of the work**;
- (c) the **amount and substantiality of the portion** dealt with in relation to the work as a whole; and
- (d) the **effect of the dealing** on the potential market for or value of the work.

YES

Is the dealing with the work for **the purpose of criticism or review**, of that or another work or of a performance of a work?

YES

Is that criticism or review accompanied by a **sufficient acknowledgment**?

YES

May qualify for s.39 CO exemption

YES

OR

Is the dealing with the work for **the purpose of reporting current events**?

YES

Is that report of current events accompanied by a **sufficient acknowledgment** (if it is not by the means of a sound recording, film, broadcast or cable programme)?

# Copyright exemptions relevant to NGOs

## **s.40 CO – Incidental inclusion of copyright material**

- Incidental inclusion of copyright material
- Applies to everyone.

# s.40 CO – Incidental inclusion of copyright material

Is the inclusion in an artistic work, sound recording, film, broadcast or cable programme only “**incidental**” – **i.e. causal, not essential, subordinate, or merely as background?**

**YES**

**May qualify for s.40 CO exemption**

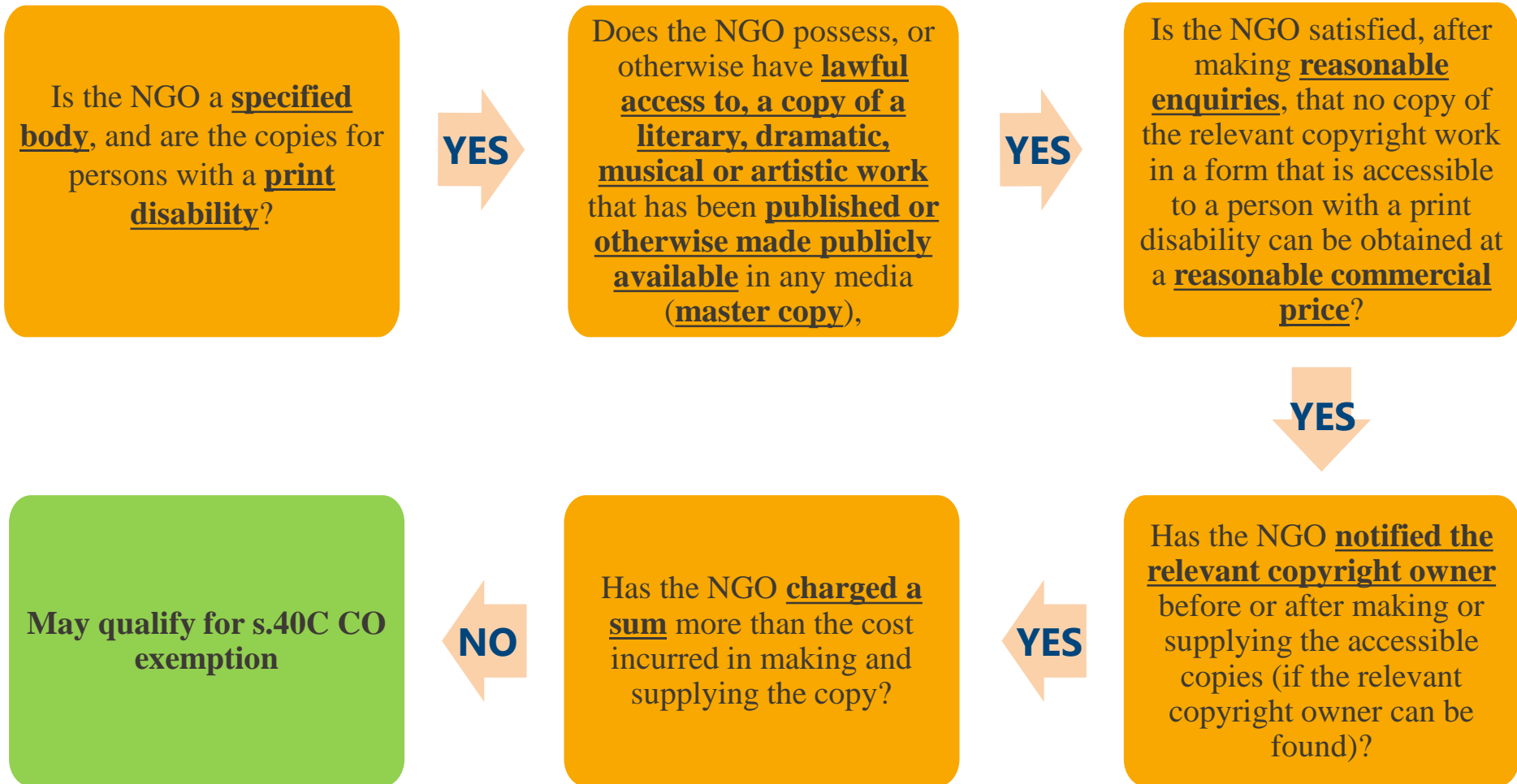
- If such artistic work, sound recording, film, broadcast or cable programme is issued or made available to the public
  - May still qualify for s.40 CO exemption



# Copyright exemptions relevant to NGOs

- **s.40C CO – Making multiple accessible copies by specified bodies for persons with a print disability**
- Applies to **specified bodies** (s.40A CO), including:
  - Educational establishments that are exempt from tax under s.88 of the Inland Revenue Ordinance; or
  - Non-profit organisations whose main function is charitable or otherwise concerned with the advancement of the welfare of persons with print disability.
- For persons with a **print disability** (s.40A CO), which includes:
  - Blindness;
  - Impaired visual function that cannot be corrected with glasses;
  - Inability, through a physical disability, to hold a book or to focus or move his eyes to the extent that would normally be acceptable for reading; and
  - Perceptual or reading disability (including dyslexia) which cannot be improved to give that person a substantially equivalent visual function to that of a person with no such disability.

# s.40C CO – Making multiple accessible copies by specified bodies for persons with a print disability



# s.40C CO – Making multiple accessible copies by specified bodies for persons with a print disability

- s.40E CO:
  - There is a duty to keep a record of any accessible copies made or supplied under s.40C CO.
- s.40CC CO: s.40C CO does not apply if the relevant master copy is:
  - (a) an infringing copy;
  - (b) a copy of a sound recording that comprises only of the performance of—
    - (i) the whole or part of a musical work;
    - (ii) music in which words are spoken, or are sung, incidentally to or in association with the music;
    - (iii) the whole or part of a dramatic work; or
    - (iv) any combination of the items described in subparagraphs (i), (ii) and (iii);
  - (c) of the whole or part of a musical work, and the making of an accessible copy would involve recording a performance of the whole or part of the work; or
  - (d) of the whole or part of a dramatic work, and the making of an accessible copy would involve recording a performance of the whole or part of the work.



Part 2: Checklist of what an NGO should consider when using copyrighted works



## Checklist:

1. How to determine if the works are protected by copyright in the first place?
2. Whether the exemptions to copyright infringement apply?
3. If not, how to locate the copyright owners and next steps?

# 1. How to determine if the works are protected by copyright

- Works must be:
  - Original (i.e. not copied; skill, judgment and labour)
  - Recorded in material form / fixed form
- Works must fall into the prescribed categories of copyright works, including:
  - Literary, artistic, musical, dramatic
  - Films, broadcasts, sound recordings, cable programmes etc.

# 1. How to determine if the works are protected by copyright

Has the copyright in the works already expired?

- For **literary, artistic and musical works** → copyright expires **50 years** after the death of the author (s.17 CO)
- For **sound recordings, broadcasts, and cable programmes** → copyright typically expire **50 years** after they are first released (s.18 & 20 CO)
- For **films** → copyright expires **50 years** after the last of the following dies (s.19 CO):
  - (a) the director;
  - (b) the author of the screenplay;
  - (c) the author of the dialogue; or (d) the composer of music specially created for and used in the film.
- For **published editions of literary, dramatic and musical works** → copyright lasts for **25 years** after its first publication (s.21 CO)

2. Determine whether the exemptions to copyright infringement apply



### 3. What to do if an exemption does not apply

- **Try to locate the copyright owner** to obtain authorisation in the form of a licence to use the copyright works:
  - Check the copy of the work for the copyright notice;
  - Check with the author to find out who owns the copyright, if there is no copyright notice;
  - Contact the various collecting societies which represent copyright owners; and
  - Search the internet for reference to the copyright owner or author.

### 3. What to do if an exemption does not apply

- Main **collecting societies** in Hong Kong:
  - Hong Kong Reprographic Rights Licensing Society (HKRRLS) (香港書刊版權授權協會)
  - Motion Picture Licensing Company (Hong Kong) Limited (MPLC)
  - Hong Kong Copyright Licensing Association (HKCLA) (香港複印授權協會)
  - Hong Kong Recording Industry Alliance Limited (HKRIA) (香港音像聯盟)
  - Composers and Authors Society of Hong Kong Limited (CASH) (香港作曲家及作詞家協會)
  - Phonographic Performance (South East Asia) Limited (PPSEAL) (香港音像版權有限公司), which is a wholly-owned subsidiary of International Federation of the Phonographic Industry (Hong Kong Group) Limited (IFPI) (國際唱片業協會(香港會)), which is an affiliated industry association of International Federation of the Phonographic Industry (IFPI)

### 3. What to do if an exemption does not apply

- If the **copyright owner cannot be found**?
  - s.66 CO - Anonymous or pseudonymous works: acts permitted on assumptions as to expiry of copyright or death of author:
    - It is not possible by reasonable enquiry to find out the identity of the author; **and**
    - It is reasonable to assume that the copyright has expired, or the author has died more than 50 years ago.
  - Note: this does not apply to Government copyright, or copyright originally vested in an international organisation with copyright period longer than 50 years by virtue of s. 188 of CO.



### 3. What to do if an exemption does not apply

- **If in doubt, do not use the copyright works!**



Part 3: Specific scenarios applicable to NGOs using copyrighted works in the course of delivering their services

# Using copyrighted works for educational purposes

Q1: Who qualifies for copyright exemptions for 'educational purposes' under the CO?

A1: Copyright exemptions for **educational purposes** are found in ss.41A-45 CO.

- However, most of these (except for s. 41) are **only available to 'educational establishments'** (教育機構) **such as schools and universities.**

# Using copyrighted works for educational purposes

Q2: How can an NGO legally use images or videos taken from the internet for 'educational purposes'?

A2: There is no general right for an NGO to use images or videos from the internet, even for 'educational purposes'.

- May be able to rely on s.41 (Things done for purposes of instruction or examination) exemption only in limited circumstance
- NGO should make sure to check if those images are protected by copyright, in which case you will need the owner's authorization before use.
  - Enquire with the owner if in doubt.
  - Alternatively, try to use images and videos that are licensed for use (e.g. creative commons licensed, Wikimedia Commons etc.)



# Using copyrighted works for promotional purposes

Q1: How can an NGO legally use copyrighted works when making and designing promotional materials?

A1: Production of promotional materials are unlikely to fall under any copyright exemption under the CO.

- Therefore, NGOs should make sure not to use copyrighted images or videos without proper authorization from owners, usually in the form of a license.



# Playing music in the background of events/ videos

Q1: How can an NGO legally play copyrighted music in the background of an event?

A1: s.76 CO may apply (performance, showing or playing of works for purposes of club, society etc.):

- Must be 'as part of the activities of, or for the benefit of, the club, society or organization'.
  - Must be non-profit, and its main objects must be charitable or otherwise concerned with the advancement of religion, education or social welfare.
  - Any admission charges to the event must be applied solely for the purposes of the club, society or organisation.
- However, this exemption does not extend to making a video of the event.

# Using printed materials

Q1: How can an NGO legally use printed materials in the course of delivering their services?

A1: There are only limited exemptions available to NGOs in the CO regarding printed materials:

- s.39 CO – criticism and review (with sufficient acknowledgement).
- s.40C CO – making multiple accessible copies by specified bodies for persons with a print disability.
- Therefore, NGOs should make sure not to use copyrighted printed materials without proper authorization from owners, usually in the form of a license.
  - This includes photocopying or scanning books.

# Using printed materials

Q2: How can an NGO properly operate a book exchange programme without infringing the CO?

A2: NGOs must be careful not to commit secondary infringement of CO:

- The book exchange must only be in relation to non-infringing books.
- If the NGO suspects that there are some infringing books being made available in the book exchange programme, it must immediately remove those copies.

# Story telling

Q1: How can an NGO legally use story books in the course of delivering its services?

A1: s.76 CO may apply (performance, showing or playing of works for purposes of club, society etc.):

- Must be 'as part of the activities of, or for the benefit of, the club, society or organisation.
  - Must be non-profit, and its main objects must be charitable or otherwise concerned with the advancement of religion, education or social welfare.
  - Any admission charges to the event must be applied solely for the purposes of the club, society or organisation.
- However, this does not extend to photocopying or scanning the story books.

# Broadcasting at a community centre

Q1: How can an NGO legally broadcast a television programme/ karaoke songs/ VCD or DVDs at a community center?

A1: The following exemptions may apply:

- s.76 (performance, showing or playing of works for purposes of club, society etc.); or
- s.81 CO (free public showing or playing of broadcast or cable programme) may apply.
- Otherwise, authorization must be obtained (license), before the broadcast or showing can legally go ahead.



# Performing copyrighted materials

Q1: How can an NGO legally perform copyrighted materials?

A1:

- s.76 CO may apply (performance, showing or playing of works for purposes of club, society etc.).
- S.68 CO may also apply (public reading or recitation of extracts from published works).



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## Performing copyrighted materials

Q2: Can an NGO put copies of a performance on its social media pages?

A2: The s.76 CO exemption does not extend to making available copies of the work (including posting videos or recordings of performances online).

- Therefore, you will still need to obtain authorization (license), before you can post such videos on social media pages or websites.



# How can an NGO protect its own intellectual property?

Q1: How can an NGO protect its intellectual property rights before an infringement has occurred?

A1:

- Register all trademarks or designs that it may use when conducting its activities.
- Use the copyright notice to indicate any copyright works produced by the NGO, to put other parties on notice.
  - E.g. “©2021 [NAME OF NGO]”
- Signing agreements with third parties who create content or works for the NGO, which makes clear at the beginning who owns the intellectual property rights.

# How can an NGO protect its own intellectual property?

Q2: What are the moral rights of the creator of the intellectual property?

A2: Morals rights:

- to be attributed (that is, credited) as author or director of the work respectively (called the right of attribution); and
- not to have his work treated in a derogatory way (called the right of integrity).

The right to be credited can be passed on if the creator dies.

- The right not to be falsely credited can be enforced by the creator's personal representatives after their death.
- However, it is common for moral rights to be waived, for example through an employment contract or service agreement.



# How can an NGO protect its own intellectual property?

Q3: What can an NGO do if it discovers that someone has used its intellectual property without authorization?

A3: Contact the infringer to settle the dispute. If the infringement carries on, consider seeking legal advice.





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