COPYRIGHT I. COPYRIGHT (Note: The contents of this topic are subject to change in view of the current legislative proposal to amend the Copyright Ordinance. The relevant contents will be updated if the proposed amendments are passed into law.) Copyright is a form of property rights. It protects the way authors express themselves, which can be in the form of a written essay, an art work, a piece of music, a film, etc. If a person owns the copyright of a work, the person will have the exclusive right to carry out certain acts in respect of the work, most importantly, to copy and exploit (e.g. sell) the work, and to prevent others from copying or exploiting the work without authority. In Hong Kong , copyright is governed by the Copyright Ordinance (Cap. 528 of the Laws of Hong Kong) under which only the following nine categories of works enjoy copyright. Category of Work Examples Literary Works Written works, such as poems, novels, essays, letters, lyrics, computer programs, design specifications, user manuals, tables, and compilations. Dramatic Works Works intended to be performed, such as works of dance and mime, film scripts, and screenplays. Musical Works Musical scores. Artistic Works Graphic works (paintings, drawings, diagrams, maps, charts, plans, engravings, etchings, lithographs, and woodcuts), photographs, sculptures, collages, buildings (and models for buildings), and works of artistic craftsmanship (e.g. jewelries). Sound Recordings Recordings of sounds regardless of medium e.g. gramophone records, tapes, CDs, MP3 files stored on memory chips. Films Recordings of moving images regardless of medium e.g. tapes, VCDs, DVDs, MPEG files stored on memory chips. Broadcasts Wireless transmissions of sounds and/or visual images e.g. TV broadcasts and radio broadcasts. Cable Programmes Items included in a service via cable e.g. cable TV programmes. Typographical arrangements of published editions Layouts and typographies of published works (e.g., newspapers, books or magazines). It is important to note that an item may be protected by more than one copyright as it may consist of more than one copyright work. A good example is a book, which may contain the following copyright works: written words (literary works), drawings (artistic works), photographs (artistic works), and the overall layout of the book (typographical arrangement). Similarly, a musical CD may comprise the following copyright works: underlying music (musical works), lyrics (literary works), and the CD as a record (sound recording). Thus if a person makes a copy of a book or musical CD without permission, the person will infringe not just one copyright but all of the copyrights embodied in the book or CD. INFRINGEMENT OF COPYRIGHT AND PERMITTED ACTS (EXCEPTIONS TO COPYRIGHT INFRINGEMENT) II. INFRINGEMENT OF COPYRIGHT AND PERMITTED ACTS (EXCEPTIONS TO COPYRIGHT INFRINGEMENT) Under the Copyright Ordinance, copyright owners have the exclusive right to carry out the following acts in relation to their works (see sections 22-29 of the Copyright Ordinance). To copy the work on to a tangible medium (e.g. paper or any digital medium). To put into circulation (i.e. to distribute) copies of the work not previously put into circulation anywhere in the world. To rent copies of computer programs and sound recordings to the public for economic or commercial advantage. To make copies of the work available to the public via the Internet. To perform, show or display the work in public (it does not apply to artistic works and typographical arrangements of published editions). To broadcast or include the work in a cable programme service (it does not apply to typographical arrangements of published editions). To make an adaptation of a literary, dramatic or musical work, which includes: translating a work into another language; converting a dramatic work into a non-dramatic work, and vice versa; conveying a story by pictures; arranging or transcribing a musical work; converting a computer program into another computer language or code. To carry out any of the above acts in relation to an adaptation (e.g. to photocopy a Chinese translation of an English book, or sell copies of the translation etc.). Civil liability If a person, without the consent of the copyright owner, carries out or causes or requires another party to carry out any of the above acts, that person will infringe the copyright of the works in question. Such infringement is referred to as "primary infringement" , and does not require proof of guilt in the infringer's mind. Thus, even if the infringer does not know that his act infringes a copyright, that infringer will still be liable. There are other two important points in relation to the primary infringement of a copyright. Infringement exists even when the infringing act is done indirectly (such as copying from a source

which is in turn a copy of the original) (see section 22(3)(b) of the Copyright Ordinance). To constitute infringement, all that is required is that the infringing act is done in respect of a "substantial part" of a work (see section 22(3)(a) of the Copyright Ordinance). The test for substantiality is qualitative and not quantitative. Thus there are no fixed quantitative measures (e.g. number of words or pages for a book) for determining whether a part of a work is a substantial part of the work. Generally speaking, a part of a work will be regarded as a substantial part of the work if the part contains enough of the author's skill and labour to merit protection. Primary infringement incurs only civil liability. The only exception is when the infringing copies are made for sale or hire, as this is a criminal offence in addition to civil liability (see "Criminal Offences" below). Apart from primary infringement, a person may also incur civil liability for "secondary infringement" if that person carries out, among other things, any of the following acts without the consent of the copyright owner (see sections 30 and 31 of the Copyright Ordinance). To import into or export from Hong Kong, otherwise than for his private and domestic use, infringing copies of a work. To possess, sell, distribute or otherwise deal with infringing copies of a work for the purpose of trade or business. To distribute, otherwise than for the purpose of trade or business, infringing copies of a work to such an extent as to affect prejudicially the copyright owner (e.g. loss of income or business opportunities, etc.). However, the person will only be liable if, at the time he committed the act, he knew or had reason to believe that he was dealing with infringing copies. If such knowledge or guilty state of mind cannot be proved, that person will not be liable for secondary infringement. In addition to the above, a person may also incur civil liability because of secondary infringement if he commits, among other things, any of the following acts without the consent of the copyright owner. To provide an article specifically designed or adapted for making infringing copies of a work (see section 32(1) of the Copyright Ordinance). To transmit a work by a telecommunications system enabling infringing copies to be made by reception of the transmission anywhere in the world (see section 32(2) of the Copyright Ordinance). To permit a place of public entertainment to be used for an infringing performance (see section 33 of the Copyright Ordinance). To provide apparatus/equipment or premises to host apparatus, or supply a copy of a sound recording or film for an infringing performance (see section 34 of the Copyright Ordinance). To provide a device specifically designed or adapted to circumvent the copy-protection of a work, or to publish information intended to assist such circumvention (see section 273 of the Copyright Ordinance). In a short summary regarding civil liability, if the copyright of an item is being infringed, the relevant copyright owner can institute legal action against the infringer in order to get compensation/recover loses. Also, the copyright owner may seek an injunction order from the court to prevent further infringement. Criminal Offences Criminal offences for copyright infringement are set out in sections 118, 119A and 120 of the Copyright Ordinance. Under section 118(1), a person commits an offence if he does, among other things, any of the following. To make infringing copies for sale or hire. To import into or export from Hong Kong, otherwise than for his private and domestic use, infringing copies of a work. To possess, with a view to committing further acts of infringement, sell, distribute or otherwise deal with infringing copies of a work for the purpose of trade or business. To distribute, otherwise than for the purpose of trade or business, infringing copies of a work to such an extent as to affect prejudicially the copyright owner (e.g. loss of income or business opportunities). If convicted for any of the above acts, the offender is liable to a fine of $50,000 per infringing copy and to imprisonment for 4 years. Other criminal offences include the following: Providing an article specifically designed or adapted for making infringing copies of a work (see section 118(4) and (8) of the Copyright Ordinance). Maximum sentence for this offence is a fine of $500,000 and imprisonment for 8 years. Possessing an infringing copy of a work in a copying service business (see section 119A of the Copyright Ordinance). Maximum sentence for this offence is a fine of $50,000 per infringing copy and imprisonment for 4 years. Making infringing copies of a work outside Hong Kong for export to Hong Kong (see section 120(1) of the Copyright Ordinance). Maximum sentence for this offence is a fine of $500,000 and imprisonment for

8 years. Making an article outside Hong Kong specially designed or adapted for making infringing copies of a work and intended to be so used in Hong Kong (see sections 120(2) and (3) of the Copyright Ordinance). Maximum sentence for these offences is a fine of $500,000 and imprisonment for 8 years. PATENTS III. PATENTS A patent is a type of property right which gives the patentee (i.e. the patent owner) a monopoly to make, sell, use, import, or otherwise exploit his patented invention for a fixed period of time. Unlike a copyright, a patent does not arise automatically but has to be applied for. In addition, patent rights are territorial. To enjoy patent protection for an invention in Hong Kong , one must apply for and obtain a patent for the invention in Hong Kong . This is so even if a patent has been obtained for an invention in other countries. The statute governing patent protection in Hong Kong is the Patents Ordinance (Cap. 514 of the Laws of Hong Kong), which came into force on 27 June 1997 . There are two types of patent that can be granted under the Ordinance: a "standard patent", which provides protection for a maximum term of 20 years; and a "short-term patent", which provides protection for a maximum term of 8 years. TRADE MARKS IV. TRADE MARKS A trade mark is any mark (such as a logo) which is capable of distinguishing the goods or services of one trader from those of another. In practice, a consumer tends to treat goods (or services) bearing the same trade mark as goods produced by the same manufacturer (or services offered by the same service provider), even if the identity of the manufacturer (or service provider) is unknown to the consumer. This reflects the function and value of a trade mark, namely, as an indicator of the source of the goods or services. Some authors differentiate between "trade marks" and "service marks" by using the former only in connection with goods and the latter with services. Such a distinction is not adopted in the Trade Marks Ordinance (Cap. 559 of the Laws of Hong Kong), which uses the term "trade mark" in relation to both goods and services. A trade mark may or may not be registered. If it is registered under the Trade Marks Ordinance, it is referred to as a "registered trade mark". Registration entitles the owner to enjoy the protection conferred by the Ordinance. If a trade mark is not registered in Hong Kong, it will not be protected under the Ordinance in Hong Kong, even if it has been registered in other countries. An unregistered trade mark is only protected under common law against the action of passing off (see the discussion of passing off under section VI). REGISTERED DESIGNS V. REGISTERED DESIGNS A registered design is concerned with the protection of the appearance of a finished product . It is a property right which gives the owner of the registered design the exclusive right to, among other things, make, import, sell, hire or offer or expose for sale or hire any article to which the design has been applied. As defined in section 2 of the Registered Designs Ordinance (Cap. 522 of the Laws of Hong Kong), a "design" means features of shape, configuration, pattern or ornament applied to an article by any industrial process, being features which in the finished article appeal to the eye. A design can thus be two or three-dimensional, but it must have eye appeal. A design which is hidden in the finished article, or such that the aesthetic considerations of the finished article are not normally taken into account to a significant extent by the consumers, cannot be registered under this Ordinance. PASSING OFF (MISLEADING BUSINESS REPUTATION/GOODWILL) VI. PASSING OFF (MISLEADING BUSINESS REPUTATION/GOODWILL) Passing off is concerned with the right of a trader to bring a legal action for protecting business goodwill. This right is not conferred by any ordinance but is based on common law. An action of passing off occurs when a trader unlawfully misrepresents (acts misleadingly) that his goods or services are those of another trader. Such misrepresentation made by a trader is typically by way of imitating, among other things, the following: the trade mark or brand name of another trader; the trade name or personal name of another trader; the packaging, label or get-up of goods of another trader; a fictional character created by another trader. Other common forms of misrepresentation which can also give rise to legal action for passing off include the following: a trader supplying his own goods in response to an order for goods of another trader; a trader falsely pretending to be an agent or dealer of another trader; a trader falsely stating that his goods or services are endorsed by a third party (usually a celebrity); a trader pretending that goods or services of another trader are his goods or services (often referred to as "inverse passing off"). The above

list is not exhaustive. The law of passing off is constantly evolving to combat new forms of misrepresentation. It is clear that a legal action against passing off is not confined to the imitation of a trade mark. And even where the action is based on the imitation of a trade mark, there is no requirement that the trade mark must be registered. Thus although an unregistered trade mark is not protected under the Trade Marks Ordinance, it may still be protected under common law against passing off. On the other hand, a registered trade mark is protected both under the Trade Marks Ordinance and under common law against passing off. To succeed in a legal action against passing off, the plaintiff must establish three things: the plaintiff has goodwill or reputation in his goods or services (e.g. the relevant goods/services are well-known to the public); the defendant has made a misrepresentation leading or likely to lead the public to believe that his goods or services are those of the plaintiff; and the plaintiff has suffered or is likely to suffer damage (usually business loss) as a result. An action for passing off is a civil litigation. The relief (in the form of various kinds of court order) available to the victim includes: damages (compensation); injunction (a court order forbidding the infringer to continue selling the infringing goods); surrender the infringing goods; and surrender the profits derived by the infringer in respect of the infringing goods. Legal action relating to passing off involves complex legal arguments. You are advised not to attempt to sue others for passing off without having proper legal advice. A. WILL A PERSON INFRINGE THE COPYRIGHT IN A WORK UNDER THESE SCENARIOS? A. WILL A PERSON INFRINGE THE COPYRIGHT IN A WORK UNDER THESE SCENARIOS? B. ARE THERE ANY "PERMITTED ACTS" WHICH MAY BE EXEMPT FROM THE INFRINGEMENT OF COPYRIGHT? B. ARE THERE ANY "PERMITTED ACTS" WHICH MAY BE EXEMPT FROM THE INFRINGEMENT OF COPYRIGHT? Under the Copyright Ordinance, there are a number of permitted acts which will not constitute copyright infringement (see sections 37-88 of the Copyright Ordinance). These permitted acts cover a wide range of activities relating to education, library and archives, public administration, and miscellaneous use of copyright works. The provisions defining the permitted acts are often detailed and specific. You are advised to read them carefully and note the conditions under which the relevant acts will not be regarded as copyright infringement. The information in this section only gives you some preliminary ideas for reference purposes and you must consult a lawyer if you have further queries. Fair Dealing Among the permitted acts, the most important and general permitted acts are those of "fair dealing". Under the Copyright Ordinance, fair dealing involves two elements: the dealing must be fair; and the purpose of the dealing must be confined to seven prescribed purposes — research, private study (section 38 of the Copyright Ordinance), criticism, review/comment, news reporting (section 39), education (section 41A), or public administration (section 54A). Any act which is carried out for other purposes cannot be fair dealing, including acts carried out for private use or charity. This is in stark contrast to the defence of "fair use" under the United States copyright law, which is not confined to certain prescribed purposes and which thus serves as a general defence against accusations of copyright infringement. In determining whether any dealing with a copyright work is fair, the court willconsider the following four factors (section 38(3), section 41A(2), and section 54A(2)) of the Copyright Ordinance): the purpose and nature of the dealing; the nature of the work; the amount and substantiality of the portion dealt with in relation to the original work as a whole; and the effect of the dealing on the potential market for or value of the work. Above all, the primary consideration for fair dealing is that the dealing should not conflict with a normal exploitation of the work by the copyright owner and should not unreasonably prejudice the legitimate interests of the copyright owner (section 37(3)). Generally speaking, if a dealing involves copying part of a work which is necessary for one of the seven prescribed purposes and which is not a substitute for buying a copy of the work, the dealing will more likely be permitted as one of fair dealing. On the other hand, if the dealing is not for any of the seven prescribed purposes, or it involves copying an excessive part of a work, or it is in substance a substitute for buying a copy for the work, the dealing will less likely be regarded as one of fair dealing. The question is always one of degree and impression. Education The exemption for fair dealing for the purposes of education (section 41A) expressly allows teachers to place

copies of copyright works on the school's Intranet for teaching purposes. Apart from the four factors for determining if a dealing is fair (see discussions under "Fair Dealing"), placing copies of copyright works on the school's Intranet for teaching purposes is subject to two further conditions: there are technological measures adopted to restrict access to the copies to ensure that they are made available only to persons who need to use them for the purposes of teaching or learning; AND the copies are not stored in the Intranet for a period longer than is necessary or, in any event, longer than 12 consecutive months. In addition to fair dealing, the Copyright Ordinance also contains specific provisions permitting certain acts done for educational purposes. The more important permitted acts in this regard include the following: things done for the purposes of instruction or examination (section 41); performing, playing or showing of works in the course of school activities (section 43); recording of broadcasts and cable programmes by schools for educational purposes (section 44). Other Permitted Acts There are other permitted acts under the Copyright Ordinance. The more important ones include the following: copying by librarians or archivists (sections 46-53); acts done for proceedings of the Legislative Council or judicial proceedings (section 54); copying of materials open to public inspection or on official registers (section 56); copying and making of an adaptation of a computer program by the lawful user (sections 60-61); transient and incidental copying technically required for the viewing or listening of a work on the Internet (section 65); public reading or recitation of extracts from published works (section 68); acts done in respect of artistic works on public display (section 71); performing, showing or playing of works for the purposes of a club, society, etc (section 76); recording for purposes of time-shifting (please refer to question 3); making of photographs of television broadcasts or cable programmes (section 80); free public showing or playing of broadcasts or cable programmes (section 81). The provisions defining these permitted acts are detailed and specific. One is advised to read them carefully and to seek legal advice if necessary. 1. SOME OF THE CONTENTS OF A BOOK I HAVE BORROWED ARE OUT OF COPYRIGHT (THE COPYRIGHT PERIOD HAS EXPIRED). IF I PHOTOCOPY ONLY THE PAGES CONTAINING THOSE CONTENTS, WILL I STILL INFRINGE THE COPYRIGHT IN THE BOOK? 1. SOME OF THE CONTENTS OF A BOOK I HAVE BORROWED ARE OUT OF COPYRIGHT (THE COPYRIGHT PERIOD HAS EXPIRED). IF I PHOTOCOPY ONLY THE PAGES CONTAINING THOSE CONTENTS, WILL I STILL INFRINGE THE COPYRIGHT IN THE BOOK? Yes, because apart from the copyright of the contents of a book, there is also a copyright in the typographical arrangement of the book. Photocopying the pages of a book reproduces not only the contents of the pages, but also their layout, that is, the typographical arrangement of the book. Thus although it is perfectly legal to photocopy works or contents out of copyright, you may still infringe the copyright in the typographical arrangement of the book, which belongs to the publisher. This is so unless your act falls within the permitted acts as explained in section B. 2. I AM A SHOP OWNER AND HAVE BOUGHT A LAWFUL COPY OF A MUSICAL CD. WILL I INFRINGE THE COPYRIGHT IF I PLAY THE CD IN MY SHOP? 2. I AM A SHOP OWNER AND HAVE BOUGHT A LAWFUL COPY OF A MUSICAL CD. WILL I INFRINGE THE COPYRIGHT IF I PLAY THE CD IN MY SHOP? Yes. Playing a musical CD in your shop amounts to playing a sound recording in public, as well as performing the music recorded on the CD in public. Both are infringing acts if they are done without the consent of the copyright owners (i.e. the producer of the sound recording, and the composer of the recorded music). You are advised to contact the appropriate collecting society to obtain the permission of the copyright owners (please refer to the relevant question and answer). 3. I HAVE BOUGHT A LAWFUL COPY OF A MOVIE ON A DVD. WILL I INFRINGE THE COPYRIGHT IF I SHOW THE MOVIE IN A FUND-RAISING EVENT FOR CHARITABLE PURPOSES? 3. I HAVE BOUGHT A LAWFUL COPY OF A MOVIE ON A DVD. WILL I INFRINGE THE COPYRIGHT IF I SHOW THE MOVIE IN A FUND-RAISING EVENT FOR CHARITABLE PURPOSES? Yes. Similar to playing a musical CD in public, showing a movie in public is also a copyright infringement if the showing is without the permission of the copyright owners. This is so even though the showing is for charitable purposes. 4. I HAVE BOUGHT A LAWFUL COPY OF A CD CONTAINING A COMPUTER GAME. WILL I BE LIABLE FOR COPYRIGHT INFRINGEMENT IF I LEND THE CD TO MY FRIEND FOR HIM TO PLAY THE GAME ON HIS COMPUTER? 4. I HAVE BOUGHT A LAWFUL COPY OF A CD CONTAINING A COMPUTER GAME. WILL I BE LIABLE FOR COPYRIGHT INFRINGEMENT IF I LEND THE CD TO MY FRIEND FOR HIM TO PLAY THE GAME

ON HIS COMPUTER? No, provided that two conditions are satisfied: you have uninstalled the computer game in your computer before you lend the CD to your friend; and your friend agrees to the terms of the user licence for that computer game. If either condition is not satisfied, you would be liable for authorising your friend to make an unlicensed copy of the computer game. 5. A STUDENT HAS MADE PHOTOCOPIES OF A BOOK AND DISTRIBUTED THEM TO ALL OF HIS CLASSMATES. HAS HE INFRINGED COPYRIGHT? WHAT ABOUT HIS CLASSMATES? 5. A STUDENT HAS MADE PHOTOCOPIES OF A BOOK AND DISTRIBUTED THEM TO ALL OF HIS CLASSMATES. HAS HE INFRINGED COPYRIGHT? WHAT ABOUT HIS CLASSMATES? The photocopies made by the student were clearly infringing copies if they were made without the permission of the copyright owner. If the student distributed the photocopies to his classmates for profit (e.g. he asked for a service charge in addition to the cost of making the photocopies), he would infringe the copyright of the book by selling infringing copies. This would incur not only civil liability but also criminal liability, in which he may also be liable to a fine and imprisonment. However, even if the distribution was not for profit, it might be regarded as being "to such an extent as to affect prejudicially the copyright owner", as the distribution was to the entire class. In such a case, the student would still be liable for copyright infringement, incurring both civil and criminal liabilities. It is important to note that whether or not the distribution was for profit, the defence of "fair dealing for private study" was not open to that student, as he had made multiple copies for others (see section 38(2)(b) of the Copyright Ordinance). Fair dealing is one of the exceptions to copyright infringement and more information can be found in section B. On the other hand, regardless of whether the classmates had paid for the photocopies or not, they would not be liable, as they have not committed any act contrary to the Copyright Ordinance. 6. I HAVE BOUGHT A PIRATE VCD ON THE STREET, AM I LIABLE FOR COPYRIGHT INFRINGEMENT? 6. I HAVE BOUGHT A PIRATE VCD ON THE STREET, AM I LIABLE FOR COPYRIGHT INFRINGEMENT? Under the Copyright Ordinance, the mere purchase of a pirate VCD is not an infringing (illegal) act. However, you should note that if you possess a pirate VCD in the course of trade or business, you will be liable for secondary infringement which incurs civil liability. That is, the owner of the copyright in that VCD can sue you for compensation. Furthermore, if your possession of the pirate VCD in the course of trade or business is with a view to committing further acts of infringement, your possession will also give rise to criminal liability in which you are liable to a fine and imprisonment. Apart from this, if you perform certain acts in respect of the pirate VCD, such as making an additional copy of the VCD, or showing the film contained in the VCD in public, you will certainly incur liability for such acts of infringement. 7. DO I INFRINGE COPYRIGHT JUST BY READING ARTICLES OR LISTENING TO MUSIC FOUND ON THE INTERNET? 7. DO I INFRINGE COPYRIGHT JUST BY READING ARTICLES OR LISTENING TO MUSIC FOUND ON THE INTERNET? No. Such acts do not infringe copyright, as any transient/temporary and incidental copying which is technically necessary for reading or listening to a work found on the Internet is expressly exempted from copyright infringement (see section 65 of the Copyright Ordinance). However, if in addition to reading or listening to the work, you download it on to your computer (i.e. keeping a permanent copy on your computer hard disk), or otherwise make a copy of it, you will infringe the copyright in that work unless you have a licence from the copyright owner. 8. ARE PARALLEL IMPORTS (OR GREY-MARKET GOODS) LEGAL UNDER THE COPYRIGHT ORDINANCE? 8. ARE PARALLEL IMPORTS (OR GREY-MARKET GOODS) LEGAL UNDER THE COPYRIGHT ORDINANCE? Parallel imports are goods (e.g. copies of works) which are lawfully made outside Hong Kong , but are imported into Hong Kong without the express consent of the copyright owner. By virtue of section 35(3) of the Copyright Ordinance, parallel imports are infringing except in the following two situations: The copyright owner has not appointed any exclusive licensee to make the goods in Hong Kong , nor in the place where the parallel imports are made. The copyright owner has appointed the same exclusive licensee to make the goods in Hong Kong and in the place where the parallel imports are actually made. The term "exclusive licensee" refers to a licensee who is entitled to exercise the rights granted under a licence to the exclusion of all other persons, including the copyright owner (see section 103 of the Copyright Ordinance). Thus if there is an exclusive licensee to make copies of a work in Hong

Kong, nobody else (including the copyright owner) is entitled to makes copies of that work in Hong Kong. The effect of section 35(3) of the Copyright Ordinance is that if the copyright owner has appointed an exclusive licensee to make the goods in Hong Kong but no exclusive licensee in the place where the parallel imports are made, or vice versa, the parallel imports will be regarded as copyright infringing in Hong Kong. Alternatively, if the exclusive licensee appointed to make the goods in Hong Kong is not the same as the exclusive licensee in the place where the parallel imports are made, the parallel imports will also be regarded as copyright infringing in Hong Kong. However, section 35(3) of the Copyright Ordinance does not apply to computer software parallel-imported into Hong Kong after 28 November 2003 . This is due to section 35A of the Copyright Ordinance, which came into effect on 28 November 2003 and which expressly states that parallel-imported computer software is not regarded as copyright infringing for the purpose of section 35(3). 9. IN WRITING A REPORT, I HAVE EXTRACTED VARIOUS PASSAGES, TABLES AND PICTURES FROM THE INTERNET AND INCLUDED THEM IN THE REPORT. HAVE I INFRINGED ANY COPYRIGHTS? 9. IN WRITING A REPORT, I HAVE EXTRACTED VARIOUS PASSAGES, TABLES AND PICTURES FROM THE INTERNET AND INCLUDED THEM IN THE REPORT. HAVE I INFRINGED ANY COPYRIGHTS? Yes, unless you have the licence or permission of the copyright owners to include those materials in your report. Alternatively, you may have a defence if you can justify such inclusions as "fair dealing" (that is, for the purposes of research, private study, criticism, review or news reporting - please go to section B for more information). It is important to note that the posting of a work on the Internet can only be taken to mean that the copyright owner has allowed the public to view or listen to the work, it does not mean that the copyright owner has licensed the public to copy the work (other than any transient and incidental copying technically necessary for viewing or listening to the work, which is permitted under section 65 of the Copyright Ordinance). 10. MY COMPANY HAS A PRACTICE OF KEEPING PHOTOCOPIES OF NEWSPAPER ARTICLES ABOUT THE COMPANY AND ITS COMPETITORS IN AN ARCHIVE ACCESSIBLE TO ITS STAFF. IS MY COMPANY LIABLE FOR COPYRIGHT INFRINGEMENT? 10. MY COMPANY HAS A PRACTICE OF KEEPING PHOTOCOPIES OF NEWSPAPER ARTICLES ABOUT THE COMPANY AND ITS COMPETITORS IN AN ARCHIVE ACCESSIBLE TO ITS STAFF. IS MY COMPANY LIABLE FOR COPYRIGHT INFRINGEMENT? Yes, your company is liable for making copies of the newspaper articles without the licence or permission of the copyright owners. To obtain a licence from publishers of local newspapers, your company may contact the Hong Kong Copyright Licensing Association (HKCLA) , which represents authors and publishers of 12 local newspapers and 19 local magazines. Alternatively, you may directly contract the relevant newspapers companies in order to seek their permission. 11. IF I PLACE HIT SONGS ON MY WEBSITE FOR OTHERS TO DOWNLOAD, BUT PURELY FOR SAMPLING PURPOSES, WILL I INFRINGE THE COPYRIGHTS ON THOSE SONGS? WHAT IF I PLACE ONLY A PART OF EACH SONG ON THE WEBSITE? 11. IF I PLACE HIT SONGS ON MY WEBSITE FOR OTHERS TO DOWNLOAD, BUT PURELY FOR SAMPLING PURPOSES, WILL I INFRINGE THE COPYRIGHTS ON THOSE SONGS? WHAT IF I PLACE ONLY A PART OF EACH SONG ON THE WEBSITE? Yes, the placing of a hit song on your website without the consent of the copyright owners is an infringing act even if it is purely for sampling purposes (see section 26 of the Copyright Ordinance). Such an act does not fall within the permitted acts under the Copyright Ordinance (see section B). If you place only part of a hit song on your website, your act will still infringe upon the copyright of the song if the part is a substantial part (assessed qualitatively but not quantitatively) of the hit song. Generally speaking, a part of a work will be regarded as a substantial part of the work if the part contains enough of the author's skill and labour to merit protection. A part of a hit song used for sampling purposes, which would normally the most popular or attractive part of the song, is likely to be considered a substantial part of the hit song. 12. I HAVE BOUGHT A LAWFUL COPY OF A CD CONTAINING A COMPUTER PROGRAM. DO I INFRINGE THE COPYRIGHT BY MAKING A BACKUP COPY OF THE CD? WHAT ABOUT INSTALLING THE PROGRAM ON MORE THAN ONE COMPUTER (E.G. ON MY HOME COMPUTER AND OFFICE COMPUTER)? 12. I HAVE BOUGHT A LAWFUL COPY OF A CD CONTAINING A COMPUTER PROGRAM. DO I INFRINGE THE COPYRIGHT BY MAKING A BACKUP COPY OF THE CD? WHAT ABOUT INSTALLING THE PROGRAM ON MORE THAN ONE COMPUTER (E.G. ON MY HOME COMPUTER AND OFFICE COMPUTER)? In reply to the first question, the answer is No. By virtue of section 60 of the Copyright Ordinance, a lawful

user of a computer program may make a back-up copy of the program without infringing the copyright in the program if it is necessary for him to have the back-up copy for the purposes of his lawful use. However, this is all subject to the terms of the user licence for that computer program. If the user licence prescribes certain conditions for making a back-up copy, the user must comply with those conditions when making the back-up copy. For the second question, the installation of a computer program is governed by the terms of the user licence for that computer program. You should read the user licence carefully to see if you are allowed to install the program on more than one computer. 13. I HAVE BOUGHT A LAWFUL COPY OF A CD CONTAINING A COMPUTER PROGRAM. DO I INFRINGE COPYRIGHT BY RESELLING THE CD THROUGH AN AUCTION ON THE INTERNET? 13. I HAVE BOUGHT A LAWFUL COPY OF A CD CONTAINING A COMPUTER PROGRAM. DO I INFRINGE COPYRIGHT BY RESELLING THE CD THROUGH AN AUCTION ON THE INTERNET? No. Reselling a computer program by itself does not infringe copyright, provided that you have fully uninstalled the program and deleted all copies of it from your computer before you complete the resale. However, you must check the terms of the user licence for the computer program before you resell the program. If the user licence expressly prohibits resale of the program (e.g. by expressly disallowing the transfer of the user licence, or the user licence will be automatically terminated upon a transfer), then your resale of the program may not transfer a valid user licence to the subsequent purchaser. This in effect renders the resale of the program ineffective (see section 64 of the Copyright Ordinance). 14. IS IT ILLEGAL TO USE THE BITTORRENT (BT) TECHNOLOGY IN HONG KONG? 14. IS IT ILLEGAL TO USE THE BITTORRENT (BT) TECHNOLOGY IN HONG KONG? BT is a file-sharing technology designed for efficient distribution of large files or large amounts of data through the Internet. When several computers are downloading the same file at the same time, each computer is also passing (or uploading) the portions of the file to other computers. As a result, the speed of downloading is faster from just one single source. (Note: If you want to know more about BT, please ask an IT expert.) The BT technology, like any other technology, is neutral in nature and there is no law in Hong Kong which says that the use of BT by itself is illegal. Whether or not a user incurs legal liabilities by using BT will depend on what use he makes of the technology. If the user uses BT to download or upload infringing copies of a work, clearly his acts will be illegal. But if he uses BT to share his own works with others (or share works with the consent of the copyright owners), then it will be a perfectly lawful use of BT. 15. IF MY ACTS (E.G. DISTRIBUTING A COPYRIGHTED WORK WITHOUT PERMISSION) ARE NOT DONE FOR COMMERCIAL PURPOSES, WILL I BE IMMUNE FROM CRIMINAL PROSECUTION FOR COPYRIGHT INFRINGEMENT? 15. IF MY ACTS (E.G. DISTRIBUTING A COPYRIGHTED WORK WITHOUT PERMISSION) ARE NOT DONE FOR COMMERCIAL PURPOSES, WILL I BE IMMUNE FROM CRIMINAL PROSECUTION FOR COPYRIGHT INFRINGEMENT? No. If you distribute a copyright work for non-commercial purposes but the distribution is to such an extent as to affect prejudicially the copyright owner (e.g. loss of income or business opportunities), you will also incur criminal liability (see section 118(1)(f) of the Copyright Ordinance). 16. WHAT WILL BE THE CONSEQUENCE IF A COMPANY IS FOUND CRIMINALLY LIABLE FOR COPYRIGHT INFRINGEMENT? 16. WHAT WILL BE THE CONSEQUENCE IF A COMPANY IS FOUND CRIMINALLY LIABLE FOR COPYRIGHT INFRINGEMENT? The penalty for a company found criminally liable for copyright infringement is a fine. In addition, if the infringing act is shown to have been committed with the consent of or to be attributable to any act on the part of any director, manager, secretary or other similar officer of the company or any person purporting to act in any such capacity, then the relevant person(s) and the company will both be criminally liable. This means that they may be liable to a fine and/or imprisonment pursuant to the relevant ordinance sections. 17. I HAVE BOUGHT A LAWFUL COPY OF A MUSICAL CD. WILL I INFRINGE THE COPYRIGHT IF I CONVERT IT INTO MP3 FORMAT SO THAT I CAN PLAY IT ON A MP3 PLAYER? 17. I HAVE BOUGHT A LAWFUL COPY OF A MUSICAL CD. WILL I INFRINGE THE COPYRIGHT IF I CONVERT IT INTO MP3 FORMAT SO THAT I CAN PLAY IT ON A MP3 PLAYER? Under the current law of Hong Kong , the answer is yes. The conversion of a musical CD into MP3 format involves copying the sound recording and all its underlying works (musical works and lyrics). This is infringement unless you have the consent of the copyright owners. Note that even though you have bought a lawful copy of the CD, this does not mean that you have the consent of the copyright owners to

convert the CD into MP3 format. Furthermore, such conversion does not fall within any of the permitted acts under the Copyright Ordinance (please refer to section B). (Note that the Copyright (Amendment) Bill 2011, which has yet to be passed into law, contains a provision to exempt such conversion from copyright infringement.) 1. IS IT TRUE THAT COPYRIGHT LAW ALLOWS ME TO PHOTOCOPY, FOR EXAMPLE, NOT MORE THAN 10% OF A BOOK? 1. IS IT TRUE THAT COPYRIGHT LAW ALLOWS ME TO PHOTOCOPY, FOR EXAMPLE, NOT MORE THAN 10% OF A BOOK? No. Photocopying a book without the licence or permission of the copyright owner is prima facie (apparently) an infringement, and liability will arise if you have photocopied a substantial part of the book. The test for substantiality is qualitative but not quantitative. There is no such rule which says that one is safe if one photocopies less than 10% (or any other percentage) of a book. It is possible that 10% of a book is already a substantial part of the book. Thus unless you have a defence (such as fair dealing) or obtained the permission from the copyright owner, you are likely to be liable for infringing the copyright in the book. 2. I AM A MEDICAL DOCTOR AND HAVE MY OWN CLINIC. CAN I PLAY MOVIE DVDS IN MY CLINIC TO ENTERTAIN MY PATIENTS WHILE THEY ARE WAITING? 2. I AM A MEDICAL DOCTOR AND HAVE MY OWN CLINIC. CAN I PLAY MOVIE DVDS IN MY CLINIC TO ENTERTAIN MY PATIENTS WHILE THEY ARE WAITING? No, unless you have the licence or permission of the copyright owners. The playing of a movie DVD in your clinic amounts to showing the movie (and all its underlying works) in public. This is copyright infringement if the showing is without the permission of the copyright owners. 3. I WORK NIGHT SHIFTS AND CANNOT WATCH MY FAVOURITE TELEVISION PROGRAMMES WHEN THEY ARE SHOWN. CAN I RECORD THEM SO THAT I CAN WATCH THEM WHEN I AM OFF FROM WORK? 3. I WORK NIGHT SHIFTS AND CANNOT WATCH MY FAVOURITE TELEVISION PROGRAMMES WHEN THEY ARE SHOWN. CAN I RECORD THEM SO THAT I CAN WATCH THEM WHEN I AM OFF FROM WORK? Yes. The Copyright Ordinance allows the recording of television programmes for the purposes of time-shifting. Note, however, that such recording can only be made for private and domestic use, and solely for the purpose of enabling the television programme to be viewed at a more convenient time (see section 79 of the Copyright Ordinance). 4. I HAVE 20 COMPUTERS IN MY COMPANY AND NEED TO BE COST-CONSCIOUS WHEN PURCHASING SOFTWARE. CAN I INSTALL CHEAPER YET LAWFUL COPIES OF SOFTWARE PURCHASED FROM OTHER COUNTRIES? WILL IT MAKE ANY DIFFERENCE IF THERE IS AN EXCLUSIVE DEALER OF THE SOFTWARE IN 4. I HAVE 20 COMPUTERS IN MY COMPANY AND NEED TO BE COST-CONSCIOUS WHEN PURCHASING SOFTWARE. CAN I INSTALL CHEAPER YET LAWFUL COPIES OF SOFTWARE PURCHASED FROM OTHER COUNTRIES? WILL IT MAKE ANY DIFFERENCE IF THERE IS AN EXCLUSIVE DEALER OF THE SOFTWARE IN HONG KONG? After 28 November 2003 , copies of computer programs lawfully made in other countries will not be regarded as infringing copies for the purposes of section 35(3) of the Copyright Ordinance. This means that the possession of such copies in Hong Kong will not infringe the copyright in the computer program, whether or not the possession is for the purpose of trade, and whether or not there is an exclusive dealer of the computer program in Hong Kong . Thus you are free to install lawful copies of software purchased from other countries on to the computers in your company. Note, however, that this exemption applies only to copies of a computer program and ancillary works embodied in the same article as a copy of the computer program. The exemption does not apply to other copyright works (see section 35A of the Copyright Ordinance). 5. WILL I INFRINGE ANY COPYRIGHT IF I TAKE PHOTOGRAPHS OF BUILDINGS IN HONG KONG? 5. WILL I INFRINGE ANY COPYRIGHT IF I TAKE PHOTOGRAPHS OF BUILDINGS IN HONG KONG? No. Copyright of a building in a public place is not infringed by making a photograph or film of the building, or by making a graphic work representing the building (see section 71 of the Copyright Ordinance). 6. I AM A TEACHER AND HAVE FOUND A GOOD ARTICLE IN A MAGAZINE. CAN I MAKE PHOTOCOPIES OF THE ARTICLE AND DISTRIBUTE THEM TO MY STUDENTS FOR CLASS DISCUSSION? 6. I AM A TEACHER AND HAVE FOUND A GOOD ARTICLE IN A MAGAZINE. CAN I MAKE PHOTOCOPIES OF THE ARTICLE AND DISTRIBUTE THEM TO MY STUDENTS FOR CLASS DISCUSSION? Yes, you can do so by relying on section 41A of the Copyright Ordinance, which allows fair dealing with a copyright work by a teacher for the purposes of teaching at school. In assessing whether your making of photocopies is fair dealing, the following four factors are important: the purpose and nature of the dealing; the nature of the work; the amount and substantiality of the portion dealt with in relation to the original work as a whole;

and the effect of the dealing on the potential market for or value of the work Thus, as a general rule, your making of photocopies should be reasonable and necessary for your class discussion, and should not amount to a substitute for buying a copy of the magazine. To be prudent, you should ensure that your photocopying is not excessive (eg. making just enough copies for classroom use) and that you only photocopy the part that is necessary for the class discussion (eg. photocopying only those passages which are relevant to the discussion). Apart from section 41A, you may follow the Guidelines for Photocopying of Printed Works by Not-for-profit Educational Establishments issued by the Intellectual Property Department for making photocopies for classroom use. The Guidelines allow you to make photocopies of a complete article in newspapers or periodicals (clause E(6)(a)(i) of the Guidelines) under the following conditions: Multiple copies of a work may be made by or on behalf of a teacher giving a course (clause E (1)). Copies made are for the purpose of distribution to students for teaching, discussion or classroom use. Students may retain the copies for subsequent reference (clause E (2)). The number of copies made should not exceed one copy per student in a course (clause E (4)). There should not be more than 27 instances of copying made for one course in one academic year (clause E (5)). Furthermore, you should note that the making of photocopies must comply with the conditions of spontaneity (clause D (4)), brevity (clause E (6)), and cumulative effect (clause E (7)). These conditions are rather stringent. In particular, "spontaneity" is defined to mean that "the time of the decision to use the work and the proposed time of its use in the classroom should be so close that it would be unreasonable to require the teacher to obtain permission for the copying. If the time between the decision and the proposed use is three working days or less then for the purpose of this clause, it will be deemed unreasonable to require the teacher to obtain permission for the copying." Thus if you decide to make photocopies of a work for your teaching well before they are to be used in the classroom, you cannot rely on the Guidelines for protection. 7. I AM A TEACHER AND LIKE TO COLLECT READING MATERIALS FOR MY STUDENTS. IF I SCAN THOSE MATERIALS AND PUT THEM ON MY WEBSITE FOR MY STUDENTS TO DOWNLOAD, WILL I INFRINGE COPYRIGHT? WHAT IF I PUT THEM ON THE SCHOOL'S INTRANET ACCESSIBLE ONLY TO MY STUDENT 7. I AM A TEACHER AND LIKE TO COLLECT READING MATERIALS FOR MY STUDENTS. IF I SCAN THOSE MATERIALS AND PUT THEM ON MY WEBSITE FOR MY STUDENTS TO DOWNLOAD, WILL I INFRINGE COPYRIGHT? WHAT IF I PUT THEM ON THE SCHOOL'S INTRANET ACCESSIBLE ONLY TO MY STUDENTS? Under the existing law, placing copies of copyright materials on your own website without the licence or permission of copyright owners is infringement, even if it is for educational purposes. However, you can place them on the school's Intranet without infringing copyright by relying on section 41A of the Copyright Ordinance, which permits a teacher to place copies of copyright works on the school's Intranet for the purposes of teaching. But you should note the pre-condition for section 41A: namely, that your placing of copies of copyright works on the school's Intranet is fair dealing (see the discussions under "Fair Dealing" and the four factors). Generally speaking, those copies of copyright works placed on your school's Intranet should be reasonable and necessary for your teaching, and should not amount to a substitute for buying the original book or publication containing those works. In addition, the exemption under section 41A is subject to two conditions: there are technological measures adopted to restrict access to the copies of copyright works on the school's Intranet to ensure that they are made available only to persons who need to use them for the purposes of teaching or learning; AND the copies are not stored in the Intranet for a period longer than is necessary or, in any event, longer than 12 consecutive months. If either one of these conditions is not complied with, the exemption under section 41A will not apply, and you will infringe copyright unless you have obtained a licence from the copyright owners. 8. CAN A TEACHER COPY EXAMINATION QUESTIONS FOUND ON THE INTERNET AND INCLUDE THEM IN HIS OWN EXAMINATION PAPER FOR HIS STUDENTS? 8. CAN A TEACHER COPY EXAMINATION QUESTIONS FOUND ON THE INTERNET AND INCLUDE THEM IN HIS OWN EXAMINATION PAPER FOR HIS STUDENTS? Yes. Anything done for the purposes of an examination by way of setting the questions will not infringe copyright (see section 41(3) of the Copyright Ordinance). This includes copying examination questions found on the Internet and incorporating them into an examination paper. 9. CAN SCHOOLS

SHOW MOVIES WITHOUT OBTAINING PERMISSION FROM THE COPYRIGHT OWNERS? WHAT ABOUT RECORDING RADIO OR TELEVISION PROGRAMMES? 9. CAN SCHOOLS SHOW MOVIES WITHOUT OBTAINING PERMISSION FROM THE COPYRIGHT OWNERS? WHAT ABOUT RECORDING RADIO OR TELEVISION PROGRAMMES? Yes, the showing of movies at a school is permitted without the licence or permission of the copyright owners if the showing is for the purposes of instruction and is before an audience consisting of teachers and students and other persons directly connected with school activities (including parents and guardians of the students) (see section 43 of the Copyright Ordinance). In a similar vein, the recording of radio or television programmes by a school is permitted if the recording is made for educational purposes and not for gain, and an acknowledgment of authorship or other creative effort contained in the programme is incorporated in the recording. Note, however, that such recording will not be permitted if there are licensing schemes available authorising such recording and the person making the recording ought to have been aware of that fact (see section 44 of the Copyright Ordinance). 10. MY SCHOOL PLANS TO HAVE AN INTERNAL COMPETITION IN WHICH STUDENTS WILL PERFORM VARIOUS DRAMAS BASED ON SHORT NOVELS WRITTEN BY LOCAL WRITERS. CAN MY SCHOOL DO SO WITHOUT OBTAINING PERMISSION FROM THE COPYRIGHT OWNERS? 10. MY SCHOOL PLANS TO HAVE AN INTERNAL COMPETITION IN WHICH STUDENTS WILL PERFORM VARIOUS DRAMAS BASED ON SHORT NOVELS WRITTEN BY LOCAL WRITERS. CAN MY SCHOOL DO SO WITHOUT OBTAINING PERMISSION FROM THE COPYRIGHT OWNERS? Yes, so long as the performances at your school are by the teachers and students of your school and are before an audience consisting of teachers and students and other persons directly connected with the activities of your school (including parents and guardians of the students) (see section 43 of the Copyright Ordinance). 1. WHAT TYPE OF THINGS (INVENTIONS) CAN BE PROTECTED BY A PATENT? 1. WHAT TYPE OF THINGS (INVENTIONS) CAN BE PROTECTED BY A PATENT? Generally speaking, either a product or a process can be the subject matter of a patent. Products generally cover machines (the functional features of machines) and manufactured articles (single objects without moveable parts, such as a table or a cup). In respect of processes, they are methods which consist of a series of steps for making a certain product or accomplishing a certain result. Examples include the process for making a specific kind of medicine. Under the Patents Ordinance, an invention must satisfy three main requirements before a patent can be granted to that invention. Due to the vast number of products or processes for which one can obtain a patent (and some of them might be very similar to yours, and already have been registered), you should seek professional advice from a patent agent or lawyer before making an application. 2. WHAT SHOULD I NOTE BEFORE MAKING AN APPLICATION FOR A PATENT? WHAT IS THE REGISTRATION PROCEDURE? 2. WHAT SHOULD I NOTE BEFORE MAKING AN APPLICATION FOR A PATENT? WHAT IS THE REGISTRATION PROCEDURE? Apart from the difference in the duration of protection provided by the standard patent and the short-term patent, there is a difference in the application procedure for the two types of patent. A standard patent is obtained by registering with the Registrar of Patents in Hong Kong (who is the Director of Intellectual Property) a patent granted by a "designated patent office" overseas. Currently, there are three designated patent offices under the Ordinance: the State Intellectual Property Office of China, the United Kingdom Patent Office, and the European Patent Office (with the patent application designating the United Kingdom). If, for example, an invention is made in Australia and the inventor applies for and receives a patent in Mainland China (in addition to Australia), the inventor still has to apply for a separate patent in Hong Kong in order for the patent to be enforceable in Hong Kong . In short, to apply for a standard patent in Hong Kong (with a maximum term of protection of 20 years), one must first apply for a Chinese patent or a United Kingdom patent. If a Chinese patent or a United Kingdom patent is granted, the patent owner can register it as a standard patent in Hong Kong and thereby enjoy the protection conferred by the Patents Ordinance in Hong Kong . In contrast, a short-term patent (with a maximum term of protection for 8 years) can be obtained by direct application to the Registrar of Patents in Hong Kong without having to rely on any prior patent granted elsewhere.Thus, a short-term patent can be obtained much more quickly than a standard patent. A short-term patent is most suitable for short-term products which, by their nature, can only be adequately protected if a patent can be obtained quickly. A patent

is granted in return for full disclosure of the details of the invention in question. Thus when applying for a patent, whether it is a standard or a short-term patent, you must provide a sufficiently clear and complete disclosure of the invention in the application. If this requirement is not met, the application will be rejected. Furthermore, for a patent to be granted, the invention must satisfy three main requirements : The invention is susceptible to industrial application. That is, it can be made or used in any kind of industry (section 97 of the Patents Ordinance). The invention is new. This generally means that the invention was not known to anyone anywhere in the world before the patent application was filed (section 94 of the Patents Ordinance). The invention involves an inventive step (novelty). This generally means that at the time the patent application was filed, the invention was not obvious. (section 96 of the Patents Ordinance). Applying for a patent requires careful drafting of the patent application. Poor drafting may result in a business loss or litigation with other patent owners. Although it is not a legal requirement, you are strongly advised to employ a patent agent or a lawyer to help you write the patent specification, and to communicate with the relevant patent office on your behalf. This is particularly so if you wish to apply for a patent overseas (which is a necessary prior step for obtaining a standard patent in Hong Kong). For more details on patent applications in Hong Kong , please go to the website of the Intellectual Property Department. 3. WHO ACTUALLY OWNS THE PATENT RIGHTS FOR A PRODUCT OR PROCESS? WHAT ARE THE POSSIBLE PENALTIES FOR INFRINGERS (PERSONS WHO HAVE INFRINGED THE PATENT RIGHT OF OTHERS)? 3. WHO ACTUALLY OWNS THE PATENT RIGHTS FOR A PRODUCT OR PROCESS? WHAT ARE THE POSSIBLE PENALTIES FOR INFRINGERS (PERSONS WHO HAVE INFRINGED THE PATENT RIGHT OF OTHERS)? A patent normally belongs to the inventor, the person who arrived at the critical inventive concept leading to the invention. However, where an invention was made by an employee in the course of his normal or specifically assigned duties, and the circumstances were such that an invention might reasonably be expected to result from the carrying out of the duties, the invention will belong to the employer (section 57 of the Patents Ordinance). A standard patent takes effect from the date on which its granting is advertised in the official journal specified by the Registrar of Patents, and expires at the end of 20 years from the date on which the corresponding patent application was filed with the designated patent office (section 39 of the Patents Ordinance). A short-term patent also takes effect from the date on which its granting is advertised in the official journal, but expires at the end of 8 years from the date on which the patent application was filed with the Registrar of Patents (section 126 of the Patents Ordinance). For both the standard and short-term patents, the patent owner is entitled to prevent all others from committing the following acts in Hong Kong in respect of the invention (see section 73 and section 74 of the Patents Ordinance): (where the invention is a product) making, marketing, using or importing the product; (where the invention is a process) using the process. Patent infringement is a civil wrong (i.e. the infringer would incur civil liability). In patent infringement proceedings, relief (in the form of various kinds of court order) available to the patent owner against the infringer under section 80 of the Patents Ordinance includes: damages (compensation); injunction (a court order forbidding the infringer to continue selling the product or using the process under the patent in question); surrender the infringing products; and surrender the profits derived by the infringer in respect of the infringing item. 1. TO BE MORE SPECIFIC, WHAT THINGS MAY CONSTITUTE A TRADE MARK? 1. TO BE MORE SPECIFIC, WHAT THINGS MAY CONSTITUTE A TRADE MARK? With reference to section 3 of the Trade Marks Ordinance, which entered into force on 4 April 2003, a trade mark may consist of words (including personal names), indications, designs, letters, characters, numerals, figurative elements, colours, the shape of goods or their packing, and even sounds and smells. This provision allows a broader range of marks to be trade marks than that permitted under the previous law, which forbade sounds and smells to be trade marks. However, you must note that under the Ordinance, a trade mark must be capable of being represented graphically, i.e., by way of writing, drawing, musical notation, written description or any combination thereof. Thus unless a sound or smell can be clearly described by drawing or any written description, it cannot be registered

as a trade mark. 2. WHAT THINGS SHOULD I KNOW BEFORE MAKING AN APPLICATION FOR REGISTERING A TRADE MARK? WHAT IS THE REGISTRATION PROCEDURE? 2. WHAT THINGS SHOULD I KNOW BEFORE MAKING AN APPLICATION FOR REGISTERING A TRADE MARK? WHAT IS THE REGISTRATION PROCEDURE? Registration of a trade mark under the Trade Marks Ordinance is obtained by applying to the Registrar of Trade Marks, who is the Director of Intellectual Property. To qualify for registration, the trade mark must satisfy the basic requirements of being capable of distinguishing the goods or services of the applicant from those of other traders, and capable of being represented graphically. Furthermore, the trade mark must not be objectionable on the following grounds (see section 11 and section 12 of the Ordinance): the trade mark is descriptive of the goods or services in question, such as its quality, intended purpose, value, geographical origin or other characteristics of the goods or services; the trade mark has become customary in the current language or in the established practices of the trade; the trade mark is likely to deceive the public; the trade mark is identical to, or similar to, another trade mark which has already been registered, or for which an application for registration has already been made, in respect of identical or similar goods or services; or the trade mark is identical or similar to a well-known trade mark. If the relevant trade mark under application falls within any of the above categories, the application may be refused by the Registrar. An application for a trade mark registration must specify the list of good or services in respect of which registration is sought, and the class(es) in which the goods or services fall. If the application is successful, the trade mark will be registered in the name of the applicant. For more details on applying for a trade mark registration, please refer to the website of the Intellectual Property Department. Registration of trade mark is a complicated process. You are recommended to hire a lawyer or an expert in this field to handle the registration process and related matters. 3. HOW LONG DOES THE LEGAL PROTECTION OF A TRADE MARK LAST UNDER THE TRADE MARKS ORDINANCE? WHAT ARE THE POSSIBLE PENALTIES FOR AN INFRINGEMENT? 3. HOW LONG DOES THE LEGAL PROTECTION OF A TRADE MARK LAST UNDER THE TRADE MARKS ORDINANCE? WHAT ARE THE POSSIBLE PENALTIES FOR AN INFRINGEMENT? Once a trade mark is registered, the registration will last for a period of 10 years beginning on the filing date of the application for registration (see section 48 and section 49 of the Trade Marks Ordinance). Each renewal of registration, which requires the payment of a renewal fee, extends the registration for another period of 10 years. Thus, unlike copyrights and patents, as long as its registration is renewed, a registered trade mark may continue to be protected indefinitely. Under section 18 of the Trade Marks Ordinance, the owner of a registered trade mark is entitled to sue for trade mark infringement if another person uses in the course of trade or business a trade mark identical or similar to the registered trade mark in relation to identical or similar goods or services. Where the registered trade mark is a well-known trade mark, the owner is entitled to sue for infringement if another person uses in the course of trade or business a trade mark identical to or similar to the well-known trade mark, whether or not in relation to identical or similar goods or services. (Note: For a more detailed explanation of "well-known trade mark", please refer to section 4 and schedule 2 of the Trade Marks Ordinance.) Trade mark infringement is a civil wrong (i.e. the infringer would incur civil liability). In legal proceedings for trade mark infringement, relief (in the form of various kinds of court orders) by way of: damages (compensation); injunction (a court order forbidding the infringer to continue selling the goods under the trade mark in question); surrender the infringing goods; and surrender the profits derived by the infringer in respect of the infringing goods. is available to the owner of the registered trade mark. 1. WHAT SHOULD I KNOW IF WANT TO REGISTER A DESIGN WITH THE INTELLECTUAL PROPERTY DEPARTMENT? WHAT IS THE PERIOD OF LEGAL PROTECTION FOR A REGISTERED DESIGN UNDER THE REGISTERED DESIGNS ORDINANCE? 1. WHAT SHOULD I KNOW IF WANT TO REGISTER A DESIGN WITH THE INTELLECTUAL PROPERTY DEPARTMENT? WHAT IS THE PERIOD OF LEGAL PROTECTION FOR A REGISTERED DESIGN UNDER THE REGISTERED DESIGNS ORDINANCE? Registration of a design in Hong Kong is obtained by applying to the Registrar of Designs, who is the Director of Intellectual Property. To qualify for registration, the design must be new. This essentially means that the design must not be the same as any design which has already been registered, or which has been

published anywhere in the world before the filing date of the application (see section 5 of the Registered Designs Ordinance). An application for registration of a design must specify a list of articles in respect of which the registration is sought, and the class(es) into which they fall . For more details regarding an application for the registration of a design, please go to the website of the Intellectual Property Department. If an application for the registration of a design is successful, the design will be registered in the name of the applicant. The initial period of registration is 5 years beginning with the date on which the application for registration was filed. The registration may be extended for additional periods of 5 years each time, but the total period of registration may not exceed 25 years from the date on which the application for registration was filed (see section 28 of the Registered Designs Ordinance). Registration of a design is a complex process and you might suffer business loss if any error is made. You are recommended to hire a lawyer or an expert in this field to handle the registration matters for you. 2. AFTER I HAVE COMPLETED THE PRESCRIBED REGISTRATION PROCEDURE, WHAT PROTECTION CAN I ENJOY UNDER THE REGISTERED DESIGNS ORDINANCE? WHAT ARE THE POSSIBLE PENALTIES FOR AN INFRINGEMENT? 2. AFTER I HAVE COMPLETED THE PRESCRIBED REGISTRATION PROCEDURE, WHAT PROTECTION CAN I ENJOY UNDER THE REGISTERED DESIGNS ORDINANCE? WHAT ARE THE POSSIBLE PENALTIES FOR AN INFRINGEMENT? Under section 31 of the Registered Designs Ordinance, the right in a registered design is infringed by any person who does, among other things, any of the following without the consent of the registered owner: makes, imports, sells, hires or offers or exposes for sale or hire any article to which the design has been applied; makes anything for enabling any article to be made in Hong Kong or elsewhere to which the design has been applied; makes anything for enabling a kit to be made or assembled in Hong Kong or elsewhere such that the assembled article constitutes an article to which the design has been applied. (Note: A "kit" means a complete or substantially complete set of components intended to be assembled into an article.) Infringement of a registered design is a civil wrong (i.e. the infringer would incur civil liability) . In legal proceedings for infringement of a registered design, the owner of the design is entitled to seek: damages (compensation); injunction (a court order forbidding the infringer to continue selling the goods under the relevant registered design); surrender the infringing goods; and surrender the profits derived by the infringer in respect of the infringing goods. 1. HOW DO I OBTAIN COPYRIGHT? 1. HOW DO I OBTAIN COPYRIGHT? Generally, to enjoy copyright protection, a work must be original and be recorded in a material form. If these conditions are satisfied, copyright will arise automatically, and there are no requirements for registration or other formalities. Under the Copyright Ordinance, works by authors from anywhere in the world, or works first published anywhere in the world, are all eligible for copyright protection in Hong Kong. In the context of copyright, "original" simply means that the work originates from the author (i.e. not copied from elsewhere) and that it involves the author's skill and labour. Copyright does not require a work to be of high quality or aesthetic value. Nor does it require a work to be creative or new. However, works which are trivial or involve little skill and labour will not be protected. Thus titles, names, and short phrases are generally not protected by copyright (but can be protected as trade marks). Mere ideas also do not enjoy copyright. 2. HOW LONG DOES COPYRIGHT LAST? 2. HOW LONG DOES COPYRIGHT LAST? The basic rule is that copyright lasts for the life span of the author plus 50 years. This applies to literary, dramatic, musical and artistic works (note: you may go to the previous page to obtain the examples of these works). Specifically, the copyright will expire on the 31 st of December in the last calendar year of the protection period. Thus if a book was created on 1 April 1926 and the author died on 15 July 1973 , the copyright of the book will expire on 31 December 2023 . The Copyright periods for other categories of work differ in duration. The following table summarises the duration of protection for each category of work (see sections 17-21 of the Copyright Ordinance). Category of Work Duration of Protection Literary Works Life of author + 50 years Dramatic Works Life of author + 50 years Musical Works Life of author + 50 years Artistic Works Life of author + 50 years Sound Recordings 50 years from making; but if the sound recording was released during this period, copyright will expire 50 years from such release. Films Life of the last

survivor of certain designated persons (principal director, author of the screenplay, author of the dialogue or composer of music for the film) + 50 years Broadcasts 50 years from first broadcast Cable Programmes 50 years from first inclusion in a cable programme service Typographical arrangements of published editions 25 years from first publication 3. WHAT IS A COPYRIGHT NOTICE? IF I AM THE COPYRIGHT OWNER, IS IT NECESSARY TO HAVE A COPYRIGHT NOTICE ON MY WORK? 3. WHAT IS A COPYRIGHT NOTICE? IF I AM THE COPYRIGHT OWNER, IS IT NECESSARY TO HAVE A COPYRIGHT NOTICE ON MY WORK? A copyright notice is a notice placed on a copyright work which consists of three parts: (i) the symbol " ©" or the word "Copyright"; (ii) the year of first publication; and (iii) the name of the copyright owner. An example of a copyright notice is " © 2005 ABC Company". As copyright does not require any formalities, such a notice is not necessary in order for the work to enjoy copyright protection. However, there are good reasons for including a copyright notice on your copyright work. First, a copyright notice informs the whole world who the copyright owner is, and when the copyright is created. Secondly, the notice prevents an infringer from claiming to be an "innocent infringer" (i.e. did not know, and had no reason to believe, that copyright subsisted in the work in question) and thereby avoiding liability for damages (compensation) by virtue of section 108(1) of the Copyright Ordinance. For more information about who owns the copyright in a work, please go to question 4 and question 13. 4. HOW DO I FIND OUT WHO OWNS THE COPYRIGHT IN A PARTICULAR WORK? 4. HOW DO I FIND OUT WHO OWNS THE COPYRIGHT IN A PARTICULAR WORK? If the work is a published work, it will usually contain a copyright notice giving details of copyright ownership. If there is no copyright notice but there are details of authorship, you may contact the author to ascertain the owner of the copyright. If the above does not help you find out who is the copyright owner of the work, you may have to contact collecting societies representing copyright owners to see if the work is in copyright and whether any collecting society represents the copyright owner. (For a list of the major collecting societies in Hong Kong , please go to question 5.) Apart from this, you may also try searching for the author or copyright owner of the work on the Internet. 5. HOW DO I OBTAIN PERMISSION TO USE A COPYRIGHT WORK? 5. HOW DO I OBTAIN PERMISSION TO USE A COPYRIGHT WORK? The basic rule is to ask for permission from the copyright owner. If you know who the copyright owner is, you may contact the owner directly. If you do not know who the copyright owner is, you may start with the collecting societies that represent copyright owners. Currently, there are a few collecting societies in Hong Kong representing authors, publishers, composers, lyricists, and record producers. The main function of these collecting societies is to negotiate licensing terms, grant licences and collect licence fees on behalf of the copyright owners for the use of their copyright works. At present, the major collecting societies are as follows. Hong Kong Reprographic Rights Licensing Society (HKRRLS) , representing authors and publishers of printed works (books, magazines, newspapers, journals, and periodicals). Hong Kong Copyright Licensing Association (HKCLA) , representing authors and publishers of 12 local newspapers and 19 local magazines. Composers and Authors Society of Hong Kong Limited (CASH) , representing composers and lyricists of musical works. Phonographic Performance (South East Asia) Limited (PPSEAL) , representing producers of musical sound/visual recordings. PPSEAL is a wholly-owned subsidiary of International Federation of the Phonographic Industry (Hong Kong Group) Limited , an affiliated industry association of International Federation of the Phonographic Industry (IFPI) , the collecting society for recording companies worldwide. The representation of these collecting societies and the types of licence granted by them can be found from their websites. 6. ARE THERE ANY WORKS THAT I CAN USE FREELY WITHOUT HAVING TO OBTAIN PERMISSION IN RESPECT OF COPYRIGHT? 6. ARE THERE ANY WORKS THAT I CAN USE FREELY WITHOUT HAVING TO OBTAIN PERMISSION IN RESPECT OF COPYRIGHT? Yes, works that are said to be in the "public domain" may be used freely. These works include works which are out of copyright (i.e. the copyright period has expired), or which fail to meet the requirements for copyright protection (e.g. names, titles, or short phrases — they may, however, be protected as trade marks). Note that the fact that a work is made freely available (e.g. posted on a website) does not imply that the work is in the public domain. It only means that the public are given free access to the work, but they

are not given the right to copy the work or commit any act which infringes the copyright of the work. If a work is not in the public domain, one can only use it without the permission of the copyright owner if one's act is a "permitted act" under the Copyright Ordinance (see "permitted acts" on section II). In cases of doubt, it is recommended that permission of the copyright owner be obtained. 7. FURTHER TO QUESTION 6, ARE GOVERNMENT PUBLICATIONS IN THE PUBLIC DOMAIN? 7. FURTHER TO QUESTION 6, ARE GOVERNMENT PUBLICATIONS IN THE PUBLIC DOMAIN? No. Government publications enjoy copyright and the owner is the Government. This applies to all works created by civil servants in the course of their duties. Copyright of such works is referred to in the Copyright Ordinance as "Government copyright". Government copyright of a work lasts for 125 years from the making of the work. However, if the work is published commercially within 75 years from its making, the Government copyright will expire 50 years from the end of the calendar year in which the work was first so published (see section 182 of the Copyright Ordinance). The Government is entitled to copyright with respect to every Ordinance it creates. Government copyright lasts for 50 years from the publication of the Ordinance in the Gazette. Currently, the Government has made all Ordinances available on a website known as Hong Kong e-Legislation (HKeL), and granted the public a licence to download, print, make copies and distribute Ordinances on HKeL for non-commercial purposes . The same set of Ordinances is also available on the website of the Hong Kong Legal Information Institute (HKLII), a free website on the primary legal materials of Hong Kong maintained by the Law and Technology Centre of The University of Hong Kong. 8. IS MY COPYRIGHT VALID IN OTHER COUNTRIES? 8. IS MY COPYRIGHT VALID IN OTHER COUNTRIES? Yes, if the country is a member of an international copyright convention, treaty or organisation to which Hong Kong also belongs. These include the Berne Convention, the Universal Copyright Convention, the Geneva Convention for the protection of producers of phonograms, the World Trade Organisation (WTO), and the agreement on trade-related aspects of intellectual property rights (TRIPS). Most countries in the world are members of these conventions, organisations or treaties. 9. IS THE COPYRIGHT OF A FOREIGNER VALID IN HONG KONG? 9. IS THE COPYRIGHT OF A FOREIGNER VALID IN HONG KONG? By virtue of section 177 and section 178 of the Copyright Ordinance, the copyright of a foreigner is valid in Hong Kong if (i) the author of the work in question is an individual resident or having a right of abode anywhere in the world, or a body incorporated anywhere in the world; or (ii) the work is published anywhere in the world. This practically means that any copyright of a foreigner is almost certain to be valid in Hong Kong until it expires. 10. HOW IS AN ASSIGNMENT OF COPYRIGHT DIFFERENT FROM A LICENCE OF COPYRIGHT? 10. HOW IS AN ASSIGNMENT OF COPYRIGHT DIFFERENT FROM A LICENCE OF COPYRIGHT? An assignment is a transfer of ownership of copyright from the copyright owner (the "assignor") to another party (the "assignee"), with the effect that the latter will become the new copyright owner. This is analogous to the sale of a flat whereby the buyer becomes the new owner of the flat. An assignment of copyright is not effective unless it is in writing signed by or on behalf of the assignor. In contrast, a licence does not transfer ownership of copyright. It is an agreement whereby the copyright owner of a work (the "licensor") grants another party (the "licensee") the right to carry out certain specific acts in relation to the work (e.g. to make copies of the work, or to distribute copies of the work in the market) for an agreed period of time. A licence is analogous to the renting of a flat whereby the tenant is granted permission to use the flat for an agreed period of time. A licence can be exclusive or non-exclusive. An exclusive licence is one where the licensed right is exercisable only by the licensee and no one else (including the licensor). To be effective, an exclusive licence must be in writing signed by or on behalf of the copyright owner. An exclusive licensee has, except against the copyright owner, the same legal rights and remedies as if the licence had been an assignment (see section 112 of the Copyright Ordinance). A licence which is not an exclusive licence is referred to as a non-exclusive licence. 11. WHAT ARE MORAL RIGHTS? 11. WHAT ARE MORAL RIGHTS? Moral rights are concerned with protecting the personality and reputation of authors, as opposed to the economic rights of the copyright owners. As such, moral rights are inalienable from the author and cannot be assigned to other persons (see section 105 of the Copyright Ordinance). In Hong Kong ,

moral rights are conferred on two types of authors: (i) authors of literary, dramatic, musical and artistic works (examples of these works can be obtained from the previous page); and (ii) directors of films. Their moral rights under the Copyright Ordinance are as follows. The right to be identified as the author of the work or director of the film in certain circumstances (see section 89 of the Copyright Ordinance). The right in certain circumstances to object to derogatory treatment of the work or film which amounts to a distortion or mutilation or is otherwise prejudicial to the honour or reputation of the author or director (see section 92 of the Copyright Ordinance). In addition, any person has the right in certain circumstances not to have a literary, dramatic, musical or artistic work falsely attributed to him as author, and not to have a film falsely attributed to him as director (see section 96 of the Copyright Ordinance). The above rights are, however, subject to certain conditions and exceptions (see sections 90, 91, 93 and 94 of the Copyright Ordinance). While moral rights are not assignable, any of them can be waived by the right-holder (see section 98 of the Copyright Ordinance). Infringement of moral rights can be treated as a breach of statutory duty owned to the person entitled to the right (i.e. the author of a work, the director of a film, or the person to whom a work is falsely attributed). Such infringement incurs civil liability and thus the infringer may be sued by the right-holder. 12. DO PERFORMERS ENJOY COPYRIGHT PROTECTION FOR THEIR PERFORMANCES? 12. DO PERFORMERS ENJOY COPYRIGHT PROTECTION FOR THEIR PERFORMANCES? Yes. Performers enjoy rights regarding their performances under the Copyright Ordinance. The most important rights of a performer are the right to prevent any person from making a video or sound recording of his performance (otherwise than for that person's private and domestic use), and the right to prohibit any person from exploiting a video or sound recording of his performance. Details of a performer's rights can be found in sections 200-272 of the Copyright Ordinance. 13. WHO OWNS THE COPYRIGHT IN A WORK? WOULD DIFFERENT CATEGORIES OF WORK RESULT IN DIFFERENT OWNERSHIP OF COPYRIGHT? 13. WHO OWNS THE COPYRIGHT IN A WORK? WOULD DIFFERENT CATEGORIES OF WORK RESULT IN DIFFERENT OWNERSHIP OF COPYRIGHT? The basic rule of ownership is that the author — the person who creates the work — is the first owner of copyright in that work. Under the Copyright Ordinance, the author of a work differs from one category of works to another. The following table summarises the authorship for each category of work (see section 11 of the Copyright Ordinance). Category of Work Author of Work Literary Works The creator Dramatic Works The creator Musical Works The creator Artistic Works The creator Sound Recordings The producer Films The producer and the principal director Broadcasts The person making the broadcast Cable Programmes The person providing the cable programme service in which the programme is included Typographical arrangements of published editions The publisher For collaborative works involving more than one author, if the contribution of each author is distinct from that of the other authors, then each is the author of his own part ("distinct authorship") . But if the contribution of each author is not distinct from that of the other authors, then all the authors collectively are the joint authors of the work ("joint authorship") . Accordingly, for works of distinct authorship, the basic rule is that each author owns the copyright in his own part. For works of joint authorship, all the authors collectively own the copyright in the work in equal shares. In such a case, if one joint author dies, his share of the copyright will pass on to his successors and not the other joint authors. The above basic rule on ownership is subject to two important exceptions relating respectively to employee works and commissioned works. For works created by an employee within his normal duties of employment, the copyright in the work belongs to the employer, unless there is an agreement to the contrary. For commissioned works (i.e. works developed by an independent author on commission from other person or company), ownership of copyright is determined by the agreement between the person/organisation that commissioned the work and the independent author. In the case of a commissioned work, even if the person/organization that commissioned the work is not the copyright owner, that person/organisation will nonetheless enjoy two important rights under section 15(2) of the Copyright Ordinance: an exclusive licence to exploit the commissioned work for all purposes that could reasonably have been contemplated by him and the author; the power to restrain any

exploitation of the commissioned work for any purpose against which he could reasonably take objection. 14. A FREE-LANCE PROGRAMMER HAS WRITTEN A PROGRAM TO KEEP TRACK OF MY COMPANY'S INVENTORY. I HAVE PAID HIM IN FULL BUT WE HAVE NEVER DISCUSSED THE OWNERSHIP OF THE PROGRAM. AM I THE COPYRIGHT OWNER OF THE PROGRAM? IF NOT, DO I HAVE ANY RIGHTS IN THE PROGR 14. A FREE-LANCE PROGRAMMER HAS WRITTEN A PROGRAM TO KEEP TRACK OF MY COMPANY'S INVENTORY. I HAVE PAID HIM IN FULL BUT WE HAVE NEVER DISCUSSED THE OWNERSHIP OF THE PROGRAM. AM I THE COPYRIGHT OWNER OF THE PROGRAM? IF NOT, DO I HAVE ANY RIGHTS IN THE PROGRAM? In the absence of an agreement on ownership, the basic rule applies i.e. the author of the program is its copyright owner. Thus it is the free-lance programmer, rather than you, who owns the copyright in the program. However, by virtue of section 15(2) of the Copyright Ordinance, you have an exclusive licence to exploit the program for all purposes that could reasonably have been contemplated by you and the free-lance programmer at the time the program was commissioned. This should include at least the following: installing the program on your computer, using the program to keep track of your company's inventory, and making a backup copy of the program. In addition, you have the right to restrain any exploitation of the program for any purpose, which you can reasonably object to, such as forbidding the free-lance programmer to sell the program to another party or your competitor . 15. I HAVE WRITTEN A BOOK WITH TWO OTHER CO-AUTHORS. THE BOOK CONSISTS OF 12 CHAPTERS AND EACH OF US IS THE SOLE AUTHOR OF 4 CHAPTERS. HOW IS THE COPYRIGHT IN THIS BOOK SHARED BETWEEN US? 15. I HAVE WRITTEN A BOOK WITH TWO OTHER CO-AUTHORS. THE BOOK CONSISTS OF 12 CHAPTERS AND EACH OF US IS THE SOLE AUTHOR OF 4 CHAPTERS. HOW IS THE COPYRIGHT IN THIS BOOK SHARED BETWEEN US? This is a case of distinct authorship. Each author owns the copyright in the chapters which he has written. Each author can exploit his own copyright without having to obtain the consent of the other authors. If the authors wish to have some arrangement about the copyright in the entire book, they have to come to an agreement on those arrangements. 16. I HAVE WRITTEN A BOOK WITH TWO OTHER CO-AUTHORS. NONE OF US IS THE SOLE AUTHOR OF ANY PART, AS WE ALL CONTRIBUTED TO THE WRITING AND REVISING OF EACH CHAPTER. HOW IS THE COPYRIGHT IN THE BOOK SHARED BETWEEN US? 16. I HAVE WRITTEN A BOOK WITH TWO OTHER CO-AUTHORS. NONE OF US IS THE SOLE AUTHOR OF ANY PART, AS WE ALL CONTRIBUTED TO THE WRITING AND REVISING OF EACH CHAPTER. HOW IS THE COPYRIGHT IN THE BOOK SHARED BETWEEN US? This is a case of joint authorship. The copyright in the book is owned collectively by all the authors in equal shares. Any exercise of the copyright must be by consent of all the authors, in particular, any licensing of the book requires the licence of all of them. 17. WHAT HAPPENS TO THE COPYRIGHT IN A WORK WHEN THE COMPANY THAT OWNED IT NO LONGER EXISTS OR HAS BEEN TAKEN OVER? 17. WHAT HAPPENS TO THE COPYRIGHT IN A WORK WHEN THE COMPANY THAT OWNED IT NO LONGER EXISTS OR HAS BEEN TAKEN OVER? The ownership of the copyright will be passed on to those entitled to the company's assets e.g. the creditors, if the company goes into liquidation, or the company which takes it over. 18. DOES THE SAME COPYRIGHT LAW APPLY TO ELECTRONIC MATERIALS AS PRINTED MATERIALS? 18. DOES THE SAME COPYRIGHT LAW APPLY TO ELECTRONIC MATERIALS AS PRINTED MATERIALS? Yes. Provided that a work meets the criteria for copyright, it will enjoy protection under the Copyright Ordinance, regardless of whether it is in electronic form or printed form. Thus in the case of a printed work, if you are not licensed by the copyright owner, you will not have the right to photocopy the printed work, nor the right to scan the printed work and turn it into an electronic file. Similarly, in the case of a work in electronic form, unless you have the permission of the copyright owner, you are not allowed to download the work in electronic form from the Internet and store it on the hard disk of your computer, or make a hard copy of the work by printing. However, there is one unique feature of electronic materials which distinguishes them from printed materials. If a person views or listens to a work in electronic form on the Internet, there will inevitably be transient or incidental copies of the work made in the process, e.g. temporary copies made on the server of the Internet Service Provider and on the person's computer. Strictly speaking, such transient or incidental copying also infringes copyright. Because of this, the Copyright Ordinance has a special provision exempting liability for all transient or incidental copying which is technically required for the viewing or listening of a work on the Internet (see section 65 of the Copyright Ordinance). This is

to avoid making internet browsing an act of infringement. As the provision is targeted at works in electronic form, it does not apply to works in printed form. Please also note that "transient or incidental copying" usually refers to copy in temporary or volatile storage (e.g., RAM) which is necessary for viewing a webpage. If you download a song or film from the Internet (without paying the prescribed fee), it is a copyright infringement because the copy you made is not a transient nor incidental copy. It is a permanent copy intentionally kept by you in your hard disk. 19. WHAT IS MEANT BY A "MULTIMEDIA WORK"? IS THERE ANYTHING SPECIAL ABOUT THE COPYRIGHT IN SUCH A WORK? 19. WHAT IS MEANT BY A "MULTIMEDIA WORK"? IS THERE ANYTHING SPECIAL ABOUT THE COPYRIGHT IN SUCH A WORK? A multimedia work is a work in electronic form comprising of textual, audio and visual data, and which interacts with the user. Works found on websites these days are usually multimedia works. A multimedia work is a combination of different categories of works, most commonly, literary works, artistic works, musical works, sound recordings and films (examples of these works can be obtained from the previous page) . Each copyright work embedded in a multimedia work is protected on its own under the Copyright Ordinance. As such, any act committed on a multimedia work without permission may infringe the copyright in many (or even all) of the works contained in the multimedia work, e.g. copying a multimedia work entails copying all of the underlying works, thus infringing the copyright in every copyright work contained in the multimedia work. 20. ARE WEBSITE POSTINGS AND EMAIL MESSAGES PROTECTED BY COPYRIGHT? WHAT ABOUT DOMAIN NAMES ON THE INTERNET? 20. ARE WEBSITE POSTINGS AND EMAIL MESSAGES PROTECTED BY COPYRIGHT? WHAT ABOUT DOMAIN NAMES ON THE INTERNET? Yes, website postings and email messages are protected by copyright if such postings and messages meet the criteria for copyright protection (please go to section I for more information). Typically, website postings are multimedia works (see previous question), and email messages are literary works. Both are protected by copyright. One important note is that a work is posted on the website only means that the public are given free access to the work. It does not mean that the copyright owner has licensed the public to copy or exploit the work in any other way. A domain name is a name used to identify a machine on the Internet. It usually forms part of a website address or an email address. Domain names are not protected by copyright. However, a domain name may be protected by trade mark law if it is a reflection of a registered trade mark. 21. I HAVE DOWNLOADED IMAGES FROM A WEBSITE SITUATED IN THE UNITED STATES. WHICH COUNTRY'S LAW WOULD BE USED TO DETERMINE WHETHER OR NOT I HAVE INFRINGED A COPYRIGHT - US LAW OR HONG KONG LAW? 21. I HAVE DOWNLOADED IMAGES FROM A WEBSITE SITUATED IN THE UNITED STATES. WHICH COUNTRY'S LAW WOULD BE USED TO DETERMINE WHETHER OR NOT I HAVE INFRINGED A COPYRIGHT - US LAW OR HONG KONG LAW? Generally speaking, the question of infringement is governed by the copyright law which is applicable where the act in question takes place. When you download images from a website, a copy of the images is created on your computer. Your act of copying thus takes place where your computer is situated i.e. in Hong Kong. Therefore, the applicable law for determining whether your act infringes copyright is Hong Kong law. 22. IS IT LEGAL TO LINK TO A WEBPAGE (INSERT A HYPERLINK ON ONE WEBPAGE THAT LINKS TO ANOTHER WEBPAGE) WITHOUT OBTAINING ITS OWNER' S CONSENT? 22. IS IT LEGAL TO LINK TO A WEBPAGE (INSERT A HYPERLINK ON ONE WEBPAGE THAT LINKS TO ANOTHER WEBPAGE) WITHOUT OBTAINING ITS OWNER' S CONSENT? In general, linking to a webpage does not require the consent of the copyright owner. This is because a link to a webpage contains essentially the web address of the webpage. Such addresses are not protected by copyright. However, while linking by itself is not copyright infringement, it may be objectionable on other legal grounds (e.g. if the linking defames the owner of the webpage, or misleads the public into thinking that there is a trade connection with the owner of the webpage). In such cases, the linking may be illegal. GENERAL MATTERS GENERAL MATTERS OWNERSHIP OF COPYRIGHT OWNERSHIP OF COPYRIGHT COPYRIGHT AND INFORMATION TECHNOLOGY COPYRIGHT AND INFORMATION TECHNOLOGY