

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

1. PURPOSE

1.1 The Government is formulating legislative proposals for —

- (a) the specification of libraries, museums and archives under the *Copyright Ordinance* (Cap. 528) (“Ordinance”) for the purposes of certain acts which specified libraries, museums and archives are permitted to do in relation to copyright works without the copyright owners’ licence and without infringement of copyright (collectively referred to as “permitted acts”); and
- (b) the prescribed conditions for these permitted acts.

1.2 We would like to invite comments and views on our legislative proposals, particularly on the specific questions set out in this consultation paper. Unless otherwise stated, the section numbers hereinbelow refer to the provisions of the Ordinance.

2. BACKGROUND

2.1 Sections 47, 48, 50, 51, 51A, 52, 52A and 53¹ of the Ordinance provide for the permitted acts which the specified libraries, museums and archives may do, subject to compliance with the relevant prescribed conditions (see **Annex I**). In this connection, section 46(1) empowers the Secretary for Commerce and Economic Development to, by way of subsidiary legislation, —

- (a) specify the libraries, museums and archives which may do the relevant permitted acts; and

¹ There are corresponding provisions in the Ordinance governing permitted acts applicable to specified libraries, museums and archives in respect of rights in performances under the Ordinance, e.g. section 245B (c.f. sections 51A and 52A) and section 246 (c.f. section 53).

(b) prescribe the relevant conditions for their compliance.

2.2 Pending the enactment of the aforesaid subsidiary legislation, the *Copyright (Libraries) Regulations* (Cap. 528B) (“Libraries Regulations”),² in so far as they are not inconsistent with the Ordinance, will continue to be in force and have effect for all purposes as if made under the Ordinance, subject to such necessary adaptations and modifications for their having effect under the Ordinance.³

2.3 The existing regime needs to be updated for the following reasons —

(a) The existing specification and prescribed conditions under the Libraries Regulations, upon the necessary adaptations and modifications, is confined to certain libraries only for the purposes of the permitted acts under sections 47, 48 and 50.⁴ In other words, the Libraries Regulations cannot be, for the purposes of other permitted acts under sections 51, 51A, 52, 52A and 53, adapted or modified to provide for the necessary specification of libraries, museums and archives, let alone the relevant prescribed conditions for their compliance.

(b) The Libraries Regulations contain cross-references to the repealed copyright legislation of the United Kingdom (“UK”), rendering their construction and application for the purposes of the relevant permitted acts under the Ordinance convoluted and complex, creating uncertainties and inconvenience for libraries in determining whether they can avail themselves of the relevant permitted acts under the Ordinance in the course of their day-to-day operations and provisions of services.

² The Libraries Regulations were made in June 1973 by virtue of the repealed *Copyright Act 1956* of the United Kingdom as extended to Hong Kong by the repealed *Copyright (Hong Kong) Order 1972*.

³ Paragraph 43 of Schedule 2 to the Ordinance.

⁴ The specification refers to any library—

- (a) of a school as defined by section 3 of the *Education Ordinance* (Cap. 279) or university;
- (b) administered under the *Public Health and Municipal Services Ordinance* (Cap.132);
- (c) administered as part of a Government Department; and
- (d) conducted for, or administered by any establishment or organization conducted for, the purposes of facilitating or encouraging the study of all or any of the following religion, philosophy, science (including any natural or social science), technology, medicine, history, literature, languages, education bibliography, fine arts, music or law.

Further specification for the purposes of section 50 refers to any library which makes works in its custody available to the public free of charge.

2.4 For the aforesaid reasons, we propose that two pieces of subsidiary legislation be enacted to replace the Libraries Regulations by virtue of section 46(1), comprising—

- (a) a notice for specifying the types/classes of libraries, museums and archives for the purposes of the permitted acts under the Ordinance as referred to in paragraph 2.1(a) (“*the new Notice*”); and
- (b) a set of regulations for prescribing the conditions for compliance for the purposes of these permitted acts as referred to in paragraph 2.1(b) (“*the new Regulations*”).

3. LEGISLATIVE PROPOSALS

3.1 This consultation paper sets out —

- (a) the proposed specification of libraries, museums and archives for the purposes of each of the relevant permitted acts under sections 47, 48, 50, 51, 51A, 52, 52A and 53 under the new Notice; and
- (b) the proposed conditions to be included in the new Regulations for compliance for the purposes of the relevant permitted acts under sections 47, 48, 50, 51, 51A, 52, 52A and 53 under the new Regulations.⁵

Details of the Government’s proposals are set out in **Annex II**.

3.2 When formulating the proposals, we are aware of the importance of facilitating the specified libraries, museums and archives to do the permitted acts during their legitimate day-to-day operations and provisions of services. At the same time, we need to ensure that the doing of any permitted act would not conflict with a normal exploitation of the works by the copyright owners and would not unreasonably prejudice their legitimate interests. We have also taken into

⁵ Generally speaking, the conditions which the Ordinance specifically requires the new Regulations to prescribe for certain permitted acts seek to confine the scope of the permitted acts by specifying the underlying purposes of the doing of the permitted acts and by restricting the making of multiple or excessive copies of the same materials. The conditions specified by the Ordinance are however not exhaustive. This consultation paper also contains our proposals on prescribing supplementary conditions which seek to further minimize abuse of the permitted acts.

account the existing provisions in the Libraries Regulations and the corresponding statutory provisions in several overseas common law jurisdictions, including the UK provisions which are similar to the majority of the provisions of the Ordinance on the permitted acts under discussion.

4. INVITATION OF VIEWS

- 4.1 You are invited to provide your comments and views on the legislative proposals, particularly on the specific questions raised in **Annex II**.

How to Respond

- 4.2 Please send your views in writing **on or before 15 April 2024** to Division 3 of the Commerce and Economic Development Bureau (CEDB) by email, post or fax at the following addresses and fax number –

Email: libreg_consultation@cedb.gov.hk

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

Fax: 2147 3065

- 4.3 An electronic copy of this consultation document is available on the websites of CEDB (www.cedb.gov.hk) and the Intellectual Property Department (IPD) (www.ipd.gov.hk).
- 4.4 Submissions received will be treated as public information, which may be reproduced and published in whole or in part and in any form for the purposes of this consultation exercise and any directly related purposes without seeking permission of or providing acknowledgement to the respondents.

4.5 It is voluntary for any respondent to supply his or her personal data upon providing comments. The names and background information of the respondents may be posted on the websites of CEDB and IPD, referred to in other documents published for the same purposes, or transferred to other relevant bodies for the same purposes. If you do not wish your name and/or your background information to be disclosed, please state so when making your submission. For access to or correction of personal data contained in your submission, please write to CEDB via the above means.

**Commerce and Economic Development Bureau
Intellectual Property Department
February 2024**

Applicable Provisions on Permitted Acts for Specified Libraries, Museums and Archives under the Ordinance

Section No.	Provision and Summary
Section 47	<p>Copying by librarians: articles in periodicals</p> <p>(1) The librarian of a specified library may, if the prescribed conditions are complied with, make and supply a copy of an article in a periodical without infringing any copyright in the text, in any illustrations accompanying the text or in the typographical arrangement.</p> <p>(2) The prescribed conditions must include the following—</p> <ul style="list-style-type: none">(a) that copies are supplied only to persons satisfying the librarian that they require them for purposes of research or private study, and will not use them for any other purpose;(b) that no person is furnished with more than one copy of the same article or with copies of more than one article contained in the same issue of a periodical; and(c) that persons to whom copies are supplied are required to pay for them a sum not less than the cost (including a contribution to the general expenses of the library) attributable to their production. <p><i>Summary:</i> Section 47 conditionally permits the copying and the supply of copies of articles in periodicals by librarians of specified libraries for purposes of research or private study.</p>

Section No.	Provision and Summary
Section 48	<p data-bbox="456 244 1173 284">Copying by librarians: parts of published works</p> <p data-bbox="456 336 2119 507">(1) The librarian of a specified library may, if the prescribed conditions are complied with, make and supply a copy of part of a published literary, dramatic, musical or artistic work (other than an article in a periodical), or of part of a published sound recording or film, without infringing any copyright in the work, in any illustrations accompanying the work, in the typographical arrangement, or in the sound recording or film (as the case may be).</p> <p data-bbox="456 517 1301 557">(2) The prescribed conditions must include the following—</p> <ul style="list-style-type: none"> <li data-bbox="521 564 2119 644">(a) that copies are supplied only to persons satisfying the librarian that they require them for purposes of research or private study, and will not use them for any other purpose; <li data-bbox="521 654 2119 734">(b) that no person is furnished with more than one copy of the same material or with a copy of more than a reasonable proportion of any work; and <li data-bbox="521 743 2119 823">(c) that persons to whom copies are supplied are required to pay for them a sum not less than the cost (including a contribution to the general expenses of the library) attributable to their production. <p data-bbox="456 884 607 924"><i>Summary:</i></p> <p data-bbox="456 932 2119 1054">Section 48 conditionally permits the copying and supplying copies of parts of published literary, dramatic, musical or artistic works (other than articles in periodicals), or of parts of published sound recordings or films, by librarians of specified libraries for purposes of research or private study.</p>
Section 50	<p data-bbox="456 1110 1301 1150">Copying by librarians: supply of copies to other libraries</p> <p data-bbox="456 1203 2119 1283">(1) The librarian of a specified library may, if the prescribed conditions are complied with, make and supply to another specified library a copy of—</p> <ul style="list-style-type: none"> <li data-bbox="521 1292 936 1332">(a) an article in a periodical;

Section No.	Provision and Summary
	<p>(b) the whole or part of a published literary, dramatic, musical or artistic work; or (c) a sound recording or film, without infringing any copyright in the text of the article, in the work, in any illustration accompanying it, in the typographical arrangement, or in the sound recording or film, as the case may be.</p> <p>(2) Subsection (1)(b) and (c) does not apply if at the time the copy is made the librarian making it knows, or could by reasonable inquiry ascertain, the name and address of a person entitled to authorize the making of the copy.</p> <p><i>Summary:</i> Section 50 conditionally permits the copying of (a) articles in periodicals; (b) the whole or parts of published literary, dramatic, musical, or artistic works; or (c) sound recordings or films by librarians of specified libraries (“<i>supplying libraries</i>”) for supply to other specified libraries (“<i>recipient libraries</i>”).</p>
Section 51	<p>Copying by librarians, curators or archivists: preservation or replacement copies of works</p> <p>(1) Subject to subsection (1A), the librarian, curator or archivist of a specified library, museum or archive may, if the prescribed conditions are complied with, make a copy from any item in the permanent collection of the library, museum or archive—</p> <p>(a) in order to preserve or replace that item by placing the copy in its permanent collection in addition to or in place of it; or</p> <p>(b) in order to replace in the permanent collection of another specified library, museum or archive an item which has been lost, destroyed or damaged, without infringing the copyright in any literary, dramatic, musical or artistic work, in any illustrations accompanying such a work or, in the case of a published edition, in the typographical arrangement or, in the case of a sound recording or a film, in the sound recording or film.</p>

Section No.	Provision and Summary
	<p>(1A) The total number of copies made from an item in the permanent collection of a specified library, museum or archive and placed in the permanent collection of that library, museum or archive must not exceed 3 at any one time, and only one of those copies may be accessible to the public at that library, museum or archive.</p> <p>(2) The prescribed conditions must include provision for restricting the making of copies to cases where it is not reasonably practicable to purchase a copy of the item in question to fulfill that purpose.</p> <p><i>Summary:</i> Section 51 conditionally permits the copying by librarians, curators or archivists of specified libraries, museums or archives of items in the permanent collection of such libraries, museums or archives for the purposes of preservation or replacement of items in their own permanent collection, or replacing items in the permanent collection of other specified libraries, museums or archives which have been lost, destroyed or damaged.</p>
Section 51A	<p>Communication by librarians, curators or archivists: copies of works</p> <p>(1) If the conditions specified in subsection (2) are complied with, the librarian, curator or archivist of a specified library, museum or archive may, without infringing copyright, communicate a copy of an item in the permanent collection of the library, museum or archive made under section 51 to the users or staff of the library, museum or archive, by making it available online to be accessed through the use of a computer terminal installed within the premises of the library, museum or archive.</p> <p>(2) The conditions are—</p> <p>(a) that only 1 user may access the copy at any one time; and</p> <p>(b) that the library, museum or archive takes appropriate measures to prevent users from making further copies or communicating the copy to others.</p> <p>(3) Communicating to users or staff of a specified library, museum or archive is not authorized by this section if, or to</p>

Section No.	Provision and Summary
	<p>the extent that, licences under licensing schemes are available authorizing the communication in question and the person making the communication in question knew or ought to have been aware of that fact.</p> <p><i>Summary:</i> Section 51A conditionally permits librarians, curators or archivists of specified libraries, museums or archives to communicate a copy of an item in the permanent collection of those libraries, museums or archives made under section 51 to the users or staff of the libraries, museums or archives, by making the copy available online to be accessed through the use of a computer terminal installed within the premises of those libraries, museums or archives.</p>
Section 52	<p>Copying by librarians, curators or archivists: certain unpublished works</p> <p>(1) The librarian, curator or archivist of a specified library, museum or archive may, if the prescribed conditions are complied with, make and supply a copy of the whole or part of—</p> <ul style="list-style-type: none"> (a) a literary, dramatic, musical or artistic work from a document (including a document in electronic form); or (b) a sound recording or film, <p>in the library, museum or archive without infringing any copyright in the work or any illustrations accompanying it or in the sound recording or film.</p> <p>(2) This section does not apply if—</p> <ul style="list-style-type: none"> (a) the work had been published before it was deposited in the library, museum or archive; or (b) the copyright owner has prohibited copying of the work, <p>and at the time the copy is made the librarian, curator or archivist making it is, or ought to be, aware of that fact.</p> <p>(3) The prescribed conditions must include the following—</p> <ul style="list-style-type: none"> (a) that copies are supplied only to persons satisfying the librarian, curator or archivist that they require them for purposes of research or private study and will not use them for any other purpose;

Section No.	Provision and Summary
	<p>(b) that no person is furnished with more than one copy of the same material; and</p> <p>(c) that persons to whom copies are supplied are required to pay for them a sum not less than the cost (including a contribution to the general expenses of the library, museum or archive) attributable to their production.</p> <p><i>Summary:</i> Section 52 conditionally permits the copying and the supply by librarians, curators or archivists of specified libraries, museums or archives of copies of the whole or parts of unpublished literary, dramatic, musical or artistic works from a document (including a document in electronic form), sound recordings or films in the libraries, museums or archives for purposes of research or private study.</p>
Section 52A	<p>Playing or showing by librarians, curators or archivists: sound recordings or films</p> <p>(1) If the condition specified in subsection (2) is complied with, the librarian, curator or archivist of a specified library, museum or archive may play or show any sound recording or film held in the permanent collection of the library, museum or archive to an audience consisting of members of the public within the premises of the library, museum or archive, without infringing the copyright in the sound recording or film or any work included in the sound recording or film.</p> <p>(2) The condition is that if the audience is required to pay for the playing or showing of the sound recording or film, the payment required is no more than a reasonable contribution towards the maintenance of the library, museum or archive.</p> <p>(3) The playing or showing of a sound recording or film is not authorized by this section if, or to the extent that, licences under licensing schemes are available authorizing the playing or showing in question and the person playing or showing the sound recording or film in question knew or ought to have been aware of that fact.</p>

Section No.	Provision and Summary
	<p><i>Summary:</i> Section 52A conditionally permits librarians, curators or archivists of specified libraries, museums or archives to play or show any sound recording or film held in the permanent collection of those libraries, museums or archives to the public within the premises of those libraries, museums or archives.</p>
Section 53	<p>Copying by librarians, curators or archivists: articles of cultural or historical importance</p> <p>The librarian, curator or archivist of a specified library, museum or archive may make a copy of an article of cultural or historical importance or interest and deposit the copy at the library, museum or archive without infringing any copyright in respect of the article if the article is likely to be lost to Hong Kong through sale or export.</p> <p><i>Summary:</i> Section 53 permits the copying by the librarians, curators or archivists of the specified libraries, museums or archives of articles of cultural or historical importance or interest which are likely to be lost to Hong Kong through sale or export, for deposit at those libraries, museums or archives.</p>
Section 245B	<p>Communication, playing or showing by librarians, curators or archivists: sound recordings or films</p> <p>(1) The communication of a sound recording or film made by the librarian, curator or archivist of a specified library, museum or archive under section 51A to the users or staff of the library, museum or archive, by making it available online to be accessed through the use of a computer terminal installed within the premises of the library, museum or archive, does not infringe any of the rights conferred by this Part in relation to any performance or fixation included in it.</p> <p>(2) The playing or showing by the librarian, curator or archivist of a specified library, museum or archive under section</p>

Section No.	Provision and Summary
	<p>52A of a sound recording or film held in the permanent collection of the library, museum or archive to an audience consisting of members of the public within the premises of the library, museum or archive does not infringe any of the rights conferred by this Part in relation to any performance or fixation included in it.</p> <p>(3) The communication, playing or showing of a sound recording or film is not authorized by this section if, or to the extent that, licences under licensing schemes are available authorizing the communication, playing or showing in question and the person communicating, playing or showing the sound recording or film in question knew or ought to have been aware of that fact.</p> <p>(4) Expressions used in this section have the same meaning as in sections 51A and 52A.</p> <p><i>Summary:</i> The permitted acts prescribed by section 245B in respect of rights in performance correspond to those under sections 51A and 52A.</p>
Section 246	<p>Copying by librarians, curators or archivists: articles of cultural or historical importance</p> <p>(1) The librarian, curator or archivist of a specified library, museum or archive may make a copy of an article of cultural or historical importance or interest and deposit the copy at the library, museum or archive without infringing any right conferred by this Part in respect of that article if the article is likely to be lost to Hong Kong through sale or export.</p> <p>(2) Expressions used in this section have the same meaning as in section 53.</p> <p><i>Summary:</i> The permitted act prescribed by section 246 in respect of rights in performance corresponds to that under section 53.</p>

Legislative Proposals

Part 1: Proposed Specifications of Libraries, Museums and Archives

1. Proposed Specification for Libraries (for Sections 47, 48, and 50)

Section No.	Existing Specification	Proposed Specification
Section 47 Copying by librarians: articles in periodicals	The specified libraries include any library (that are not established or conducted for profit)– (a) of a school as defined by section 3 of the <i>Education Ordinance</i> (Cap. 279) or university; (b) administered under the <i>Public Health and Municipal Services Ordinance</i> (Cap.132); (c) administered as part of a Government Department; and	Having regard to the objective of the permitted acts in question (i.e. for facilitating research and private study) and also the existing specification, we consider that the specified libraries for the purpose of section 47 should be confined to libraries that are not conducted for profit , and whose collection of copyright works are generally accessible to the public. Accordingly, we propose specifying the following classes of libraries:- ⁶ (a) any library owned ⁷ by the Government, the Legislative Council and the Judiciary; (b) any library of an educational establishment specified in Schedule 1 to the Ordinance provided that such library is not conducted for

⁶ Our proposed specification is generally in line with the status quo under the Libraries Regulations.

⁷ The use of the words “owned by the Government” follows sections 118(2FA) and 119B(6) and (8).

Section No.	Existing Specification	Proposed Specification
	(d) conducted for, or administered by any establishment or organization conducted for, the purposes of facilitating or encouraging the study of all or any of the following religion, philosophy, science (including any natural or social science), technology, medicine, history, literature, languages, education bibliography, fine arts, music or law.	profit; and (c) any other library which is not conducted for profit and is either— (i) conducted for the purpose of facilitating or encouraging the research or private study of <i>any discipline</i> ⁸ , or (ii) administered by an entity that is established wholly or mainly for the same purpose. ⁹
Section 48 Copying by librarians: parts of published works	Same as section 47.	Given that both sections 48 and 47 bear a similar policy objective of enabling specified libraries to facilitate research and private study involving use of published works, we propose that the classes of libraries which may make and supply copies pursuant to section 48 should be the same as those specified in section 47 above.

⁸ Instead of specifying an exhaustive list of academic subjects or disciplines which may be commonly found in the collection of a library, we consider it desirable to make the relevant specification concise and flexible by reference to “any discipline”. This neutral term is capable of flexible adaption to take on board future developments including the evolution of new academic subjects or disciplines, thereby dispensing with the need for reviewing or amending the specification from time to time.

⁹ The proposed specification as per paragraph (c) is intended to include those libraries maintained or administered by statutory, professional, social or charitable bodies/organizations which are not conducted for profit, having regard to the fact that the collections of this class of libraries are normally accessible to all or certain sectors of the community for facilitating, amongst others, research or private study.

Section No.	Existing Specification	Proposed Specification
<p>Section 50</p> <p>Copying by librarians: supply of copies to other libraries</p>	<p>(a) All libraries specified in section 47; and</p> <p>(b) Any library (whether established or conducted for profit or not) which makes works in its custody available to the public free of charge.</p>	<p>(a) In respect of supplying libraries, we propose that all libraries (whether conducted for profit or not) may make and supply copies of works to other specified libraries pursuant to section 50. Such proposed specification seeks to enable the individual treasure trove of all libraries to be the potential sources of knowledge sharing and dissemination under the mechanism prescribed by section 50.¹⁰</p> <p>(b) As for recipient libraries, in order to strike a balance between the rights of copyright owners and users of copyright works, we consider it appropriate to confine the specified recipient libraries (i.e. those enabled by section 50 to request for acquisition of copies of copyright works) solely to those that are not conducted for profit and whose collection of copyright works are generally accessible to the public. The recipient libraries will cover those set out in paragraphs (a) to (c) of the proposed specification under section 47 above.</p>

¹⁰ Our proposed specification is in line with the corresponding UK provision.

2. Proposed Specification for Libraries, Museums and Archives (for Sections 51, 51A, 52, 52A, 53, 245B and 246)

Section No.	Existing Specification	Proposed Specification
<p>Section 51</p> <p>Copying by librarians, curators or archivists: preservation or replacement copies of works</p>	<p>Nil.</p>	<p>(a) Section 51 requires specification of—</p> <p>(i) libraries, museums and archives which either keep or place the copy of a copyright work made under section 51 in their own permanent collections for preservation or replacement under section 51(1)(a), or supply such copy to another specified library/museum/archive (as the case may be) for replacement under section 51(1)(b) (collectively “sourcing libraries, museums and archives”); and</p> <p>(ii) recipient libraries, museums and archives which receive the copy of a copyright work from the sourcing libraries, museums and archives pursuant to section 51(1)(b) (collectively “recipient libraries, museums and archives”).</p> <p>(b) Taking into account that preservation and replacement of copyright works generally fall within the legitimate day-to-day operations of and provisions of services by all libraries, museums and archives, and that for the same reason as explained in paragraph (a) of the proposed specification for section 50</p>

Section No.	Existing Specification	Proposed Specification
		<p>above, we propose that all libraries, museums and archives (whether conducted for profit or not) be specified as sourcing libraries, museums and archives which may make copies of works for themselves, and/or may make and supply copies of works to recipient libraries, museums and archives pursuant to section 51.</p> <p>(c) For similar reasons underlying the proposed specification of recipient libraries for section 50 above, we propose that the recipient libraries, museums and archives for the purpose of section 51 should cover all libraries, museums and archives, that are <u>not</u> conducted for profit, and whose collection of copyright works are generally accessible to the public.</p>
<p>Section 51A</p> <p>Communication by librarians, curators or archivists: copies of works</p>	<p>Nil.</p>	<p>(a) Given that section 51A is derived from section 51 for addressing the accessibility of preservation copies made pursuant to section 51, the specification of libraries, museums and archives for the purpose of section 51A should be in line with the proposed specification of sourcing libraries, museums and archives for section 51.</p> <p>(b) Accordingly, all libraries, museums and archives (whether conducted for profit or not) may make available copies of</p>

Section No.	Existing Specification	Proposed Specification
		items (preserved pursuant to section 51) online to be accessed through computer terminal within their own premises pursuant to section 51A.
<p>Section 52</p> <p>Copying by librarians, curators or archivists: certain unpublished works</p>	Nil.	<p>(a) In contrast to published works under sections 47, 48 and 50, unpublished works kept by libraries, museums or archives are generally <u>not</u> readily available for access in other libraries, museums, archives or on the market. Should certain classes of libraries, museums or archives be excluded from the specification for section 52, researchers or students may be unreasonably prevented from gaining access to or acquiring copies of these unpublished works for research or private study. In addition, we also note that section 52(2) has the effect of safeguarding against potential abuse, namely that section 52 does not apply if—</p> <p>(i) the work had been published before it was deposited in the library, museum or archive; or</p> <p>(ii) the copyright owner has prohibited copying of the work,</p> <p>and at the time the copy is made the librarian, curator or archivist is or ought to be aware of the above fact.</p>

Section No.	Existing Specification	Proposed Specification
		<p>(b) Based on the above consideration, we propose specifying that all libraries, museums and archives (whether conducted for profit or not) may make and supply copies of works pursuant to section 52.¹¹</p>
<p>Section 52A</p> <p>Playing or showing by librarians, curators or archivists: sound recordings or films</p>	<p>Nil.</p>	<p>(a) We propose that all libraries, museums and archives (whether conducted for profit or not) may play or show any sound recording or film held in their permanent collection to the public within their premises pursuant to section 52A. The proposed specification is in line with the specification of sourcing libraries, museums and archives that own permanent collection under sections 51 and 51A.</p> <p>(b) The following safeguards have been built in section 52A against any potential abuse:</p> <p>(i) only sound recordings or films held in the permanent collection¹² of specified libraries, museums or archives could be played or shown to the public within the premises</p>

¹¹ This proposed specification is also in line with the corresponding UK provision.

¹² See our proposed definition of “permanent collection” in item 2 of Part 2 in Annex II below.

Section No.	Existing Specification	Proposed Specification
		<p>of those libraries, museums or archives (section 52A(1));</p> <p>(ii) the audience can only be requested a payment no more than a reasonable contribution towards the maintenance of the specified libraries, museums or archives (section 52A(2)). This condition ensures that the charge is reasonable and prevents any libraries, museums or archives from acquiring unreasonable gain due to an abuse of the permitted act; and</p> <p>(iii) the playing or showing of a sound recording or film is not authorised by section 52A if, or to the extent that, licences under licensing schemes are available authorising the playing or showing in question and the person playing or showing the sound recording or film in question knew or ought to have been aware of that fact (section 52A(3)), i.e. if a copyright owner has set up or joined a licensing scheme for authorising the playing or showing of his sound recording or film in public, any specified libraries, museums or archives could not rely on this exception but have to seek the relevant licence from the relevant copyright owner or licensing body for playing or showing the copyright work in question.</p>

Section No.	Existing Specification	Proposed Specification
<p>Section 245B</p> <p>Communication, playing or showing by librarians, curators or archivists: sound recordings or films</p>	<p>Nil.</p>	<p>(a) Section 245B(1) provides that the communication of a sound recording or film <i>made by the specified library, museum or archive under section 51A</i> to its users or staff by making such sound recording or film available online to be accessed through the use of a computer terminal installed within its premises does not infringe the rights in performance.</p> <p>(b) Section 245B(2) provides that the playing or showing <i>by the specified library, museum or archive under section 52A</i> of a sound recording or film held in its permanent collection to an audience within the its premises does not infringe the rights in performance.</p> <p>(c) As section 245B(4) makes it clear that all expressions used in section 245B (i.e. including references to “<u>specified library, museum or archive</u>” in section 245B(1) and (2)) have the same meaning as in sections 51A and 52A, our proposed specification of libraries, museums and archives for the purposes of sections 51A and 52A (i.e. all libraries, museums and archives (whether conducted for profit or not)) applies to section 245B accordingly.</p>

Section No.	Existing Specification	Proposed Specification
<p data-bbox="190 244 436 323">Sections 53 and 246¹³</p> <p data-bbox="190 384 376 735">Copying by librarians, curators or archivists: articles of cultural or historical importance</p>	<p data-bbox="477 244 533 276">Nil.</p>	<p data-bbox="1171 244 2119 619">(a) The permitted acts under sections 53 and 246 (which mirrors section 53) have a public interest dimension in terms of preserving items of historical or cultural importance that are likely to be lost to Hong Kong through sale or export. The policy intent is that libraries, museums and archives entitled to do the permitted acts should not derive profits from their own collections (e.g. through trading, exhibiting, exporting or otherwise dealing in the same for profit).</p> <p data-bbox="1171 679 2119 906">(b) Accordingly, we propose that the libraries, museums and archives to be specified for the purpose of section 53 should cover all libraries, museums and archives that are <u>not</u> conducted for profit, and whose collection of copyright works are generally accessible to the public.</p> <p data-bbox="1171 967 2119 1050">(c) The proposed specification in paragraph (b) also applies to section 246 by virtue of section 246(2).</p>

¹³ The permitted act prescribed by section 246 in respect of rights in performance corresponds to that under section 53.

3. Remarks on “Libraries”, “Museums” and “Archives” which are “Conducted for Profit”

- 3.1 The terms “library”, “museum” and “archive” as referred to in the Ordinance should be given their own ordinary meaning without the need for any statutory definition. This approach is generally in line with the copyright legislation of overseas jurisdictions.
- 3.2 Permitted acts under the Ordinance, including those tailor-made for libraries, museums and archives, seek to strike a balance between the legitimate interests of copyright owners and public interest. The introduction of any permitted act, whether in favour of the community at large or any particular sector thereof, needs to comply with the “three-step test” under Article 9(2) of the *Berne Convention for the Protection of Literary and Artistic Works* which is adopted in the World Trade Organization’s *Agreement on Trade-Related Aspects of Intellectual Property Rights*¹⁴.
- 3.3 To meet the “three-step test”, we consider that only those libraries, museums and archives which are **not** “conducted for profit” should be made eligible to do several permitted acts as per the proposed specification in Part 1 above, save in some special and exceptional circumstances. This approach is generally in line with the corresponding position in several overseas common law jurisdictions such as Australia, New Zealand and the UK.
- 3.4 The term “conducted for profit” should naturally cover those institutions which are either established or conducted for profit. Besides, it should logically be extended to cover those institutions that are either administered by or form part of a profit-making entity given that such institutions form a part of the entity’s profit-making activities.

¹⁴ The “three-step test” requires that any copyright exception should (a) be confined to “special cases”; (b) not conflict with a normal exploitation of the work concerned; and (c) not unreasonably prejudice the legitimate interests of the copyright owner. The “three-step test” is also incorporated into the Ordinance for determining whether a permitted act specified in the Ordinance may be done in relation to a copyright work notwithstanding the subsistence of copyright (section 37(3)).

3.5 Accordingly, we propose specifically defining the term “conducted for profit”, in relation to a library, museum or archive, in the new Notice as a library, museum or archive that –

(a) is established or conducted for profit; or

(b) forms part of, or is administered by, a body established or conducted for profit¹⁵.

¹⁵ Our proposed definition is in line with the UK position under section 43A(4) of the *UK Copyright, Designs and Patents Act 1988* (“UK CDPA”).

Part 2: Proposed Prescribed Conditions for Permitted Acts of Specified Libraries, Museums and Archives under the Ordinance

1. Proposed Prescribed Conditions for Libraries (for Sections 47, 48, and 50)

Section No.	Existing conditions under the Ordinance ¹⁶	Proposed supplementary conditions and matters to be prescribed in the new Regulations
Section 47 Copying by librarians: articles in periodicals	<p>(a) copies are supplied only to persons satisfying the librarian that they require the copies for purposes of research or private study, and will not use the copies for any other purpose (section 47(2)(a));</p> <p>(b) no person is furnished with more than one copy of the same article or with copies of more than one article contained in the same issue of a periodical (section 47(2)(b));</p> <p>(c) persons to whom copies are supplied are required to pay for the copies a sum not less than the cost (including a contribution to the general expenses of the library) attributable</p>	<p>(a) To avoid repeated requests by library users for the same copies of materials, we propose prescribing the following supplementary condition for section 47 in the new Regulations:</p> <ul style="list-style-type: none"> - Persons requesting for copies pursuant to section 47 should further satisfy the librarians that they have not previously been supplied with the same copies, or if they were previously supplied with the same copies, such copies have already been lost, damaged or destroyed.¹⁸ <p>(b) For the purpose of satisfying the librarians themselves as to the matters referred to in paragraphs (a) and (d) of the existing conditions as well as paragraph (a) above, we propose the new Regulations shall require any person requesting the copy to fill in a declaration in writing as to the aforesaid matters, sign it and deliver</p>

¹⁶ The existing conditions under the Ordinance will be included in the new Regulations together with the proposed supplementary conditions.

¹⁸ A similar condition is also prescribed in the corresponding statutory provisions in the UK, Australia and Singapore.

Section No.	Existing conditions under the Ordinance ¹⁶	Proposed supplementary conditions and matters to be prescribed in the new Regulations
	<p>to the production of the copies (section 47(2)(c)); and</p> <p>(d) copies are supplied only to persons who satisfy the librarians that their requirement is not related to any similar requirement of other persons (section 49(1))¹⁷.</p>	<p>the same to the librarian. The librarians may then rely on the signed declarations unless they are aware that the declarations are false in a material particular pursuant to section 46(3)(a)(i).</p> <p>(c) The Ordinance does not require the new Regulations to prescribe a specific form for the declaration. We note that the <i>UK Copyright, Designs and Patents Act 1988</i> (“UK CDPA”) only lists out the relevant information which must be included in the declaration without prescribing a standard form. Other jurisdictions also do not have a prescribed form in general. While the existing Libraries Regulations specifically set out a standardised declaration¹⁹, to allow flexibility to suit the different needs of individual libraries, we propose that the new Regulations list out the information which must be included in the declaration and allow specified libraries to prescribe their own declaration forms so that they could be revised or updated by these institutions whenever necessary.</p>

¹⁷ The requirements are regarded as being similar if the requirements are for copies of substantially the same material at substantially the same time and for substantially the same purpose; and the requirements of persons are regarded as being related if those persons receive instruction to which the material is relevant at the same time and place (section 49(2)).

¹⁹ Schedule 3 and regulation 6(1)(a) of the Libraries Regulations.

Section No.	Existing conditions under the Ordinance ¹⁶	Proposed supplementary conditions and matters to be prescribed in the new Regulations
		<p>(d) Librarians nowadays may make and supply electronic copies of works to users under section 47 in appropriate circumstances. As such, we consider it necessary to also regulate the making and the supply of electronic copies by librarians by prescribing additional conditions for compliance in the new Regulations. Such proposed additional conditions seek to highlight that any unauthorised reproduction, communication or dissemination is outside the scope of the permitted act and may constitute copyright infringement.</p> <p>(e) Our proposed additional conditions for the supply of electronic copies are as follows:</p> <p>Where any person requests a specified library for a copy of a copyright work in electronic form for research or private study under section 47, the librarian shall, when an electronic copy is supplied to such person, give notice to the person specifying that –</p> <ul style="list-style-type: none"> (i) the electronic copy has been provided pursuant to section 47(1) solely for the purposes of research or private study; (ii) the copy must not be used for any other purpose;

Section No.	Existing conditions under the Ordinance ¹⁶	Proposed supplementary conditions and matters to be prescribed in the new Regulations
		<p>(iii) the copy must not be further reproduced, communicated or otherwise disseminated without licence of the copyright owner or where no applicable permitted act applies; and</p> <p>(iv) any unauthorised reproduction, communication or otherwise dissemination of the copy may constitute copyright infringement attracting civil and/or criminal liabilities.</p>
<p>Section 48</p> <p>Copying by librarians: parts of published works</p>	<p>The existing conditions for section 48 are similar to those under section 47:</p> <p>(a) copies are supplied only to persons satisfying the librarians that they require the copies for purposes of research or private study, and will not use the copies for any other purpose (section 48(2)(a));</p> <p>(b) no person is furnished with more than one copy of the same material or with a copy of more than a <i>reasonable proportion</i> of any work (section 48(2)(b));</p>	<p>Given the similar nature of sections 48 and 47 in facilitating research and private study, we propose prescribing the same supplementary conditions as section 47 as specified in (a) to (c) above together with the proposed definition for “reasonable proportion” as elaborated below.</p> <p><u><i>Proposed definition for “reasonable proportion” under section 48(2)(b)</i></u></p> <p>(a) The term “a reasonable proportion of a work” is defined in the existing Libraries Regulations²¹ by reference to the number of words as far as the making or supplying of a copy of part of a published literary, dramatic or musical work is concerned.</p> <p>(b) Nowadays, works kept in modern library collection may appear in</p>

²¹ Regulation 6(2) of the Libraries Regulations

Section No.	Existing conditions under the Ordinance ¹⁶	Proposed supplementary conditions and matters to be prescribed in the new Regulations
	<p>(c) persons to whom copies are supplied are required to pay for the copies a sum not less than the cost (including a contribution to the general expenses of the library) attributable to the production of the copies (section 48(2)(c)); and</p> <p>(d) copies are supplied only to persons who satisfy the librarians that their requirement is not related to any similar requirement of other persons (section 49(1)).²⁰</p>	<p>various formats in addition to being in a printed version. We are therefore of the view that it is opportune to review and update the definition of “a reasonable proportion of a work” under section 48.</p> <p>(c) We propose illustrating “a reasonable proportion” to the effect that not more than ten (10) per cent of a published literary, dramatic, musical or artistic work, sound recording or film will be regarded as a reasonable proportion of the work.</p> <p>(d) Such proposed illustration gives a guideline on “a reasonable proportion” without a rigid definition, bearing in mind what amounts to a “reasonable proportion” has to be considered with reference to its ordinary meaning on a case-by-case basis.</p> <p>(e) This percentage formulation is also adopted in Australia and Singapore as a benchmark for determining “reasonable portion” of a literary, dramatic and musical work in those jurisdictions. Singapore adopts a deeming approach to define “reasonable portion” for literary, dramatic and musical works, whereas</p>

²⁰ See footnote 17.

Section No.	Existing conditions under the Ordinance ¹⁶	Proposed supplementary conditions and matters to be prescribed in the new Regulations
		<p>Australia adopts a definitive approach.²² We consider that the deeming approach would provide more flexibility to librarians for application in individual circumstances by enabling them to determine whether a copy constitutes a “reasonable proportion” of a work having regard to all the circumstances of the case, notably the characteristics of a specific work in case the proposed illustration in (c) is not practically applicable.</p> <p>(f) In addition, the proposed illustration has also abandoned the existing “word-counting” approach under regulation 6(2)(a)(i) and (ii) of the Libraries Regulations so as to make the definition more user-friendly. According to section 4 of the Ordinance, poems, essays and other short literary works subsist with their own individual copyright as a literary work, we are of the view that the clarification clause under regulation 6(2)(b) is not necessary to be included in the new definition.</p>

²² The adoption of the “deeming approach” for defining “a reasonable proportion” means that where a copy of certain proportion of a published work falls within the scope of the proposed deeming provision, such copy would be regarded as a reasonable proportion of the work. On the other hand, where the copy is outside the ambit of the deeming provision, it does not necessarily follow that the copy has exceeded a reasonable proportion of the work. Instead, one needs to determine the issue by considering all the circumstances and the characteristics of a specific work. The “definitive approach” provides an exhaustive definition of “reasonable proportion”. If the amount of copying fails to satisfy the definition of “reasonable proportion”, it is definitively not reasonable.

Section No.	Existing conditions under the Ordinance ¹⁶	Proposed supplementary conditions and matters to be prescribed in the new Regulations
		<p>(g) In view of the increase of copyright works in digital format and to retain the flexibility, alternatively we may leave the term “reasonable proportion” undefined and determine it on a case-by-case basis.²³</p> <p>(h) For the reasons as explained in paragraph (d) of the proposed supplementary conditions for section 47 above, we also propose adding additional conditions for the supply of electronic copies under section 48 to the effect that when an electronic copy is supplied to a person, a notice must be given to such person specifying that—</p> <ul style="list-style-type: none"> (i) the electronic copy has been provided pursuant to section 48(1) solely for the purposes of research or private study; (ii) the copy must not be used for any other purpose; (iii) the copy must not be further reproduced, communicated or otherwise disseminated without licence of the copyright owner or where no applicable permitted act applies; and

²³ “Reasonable proportion” is no longer defined in the UK CDPA.

Section No.	Existing conditions under the Ordinance ¹⁶	Proposed supplementary conditions and matters to be prescribed in the new Regulations
		(iv) any unauthorised reproduction, communication or otherwise dissemination of the copy may constitute copyright infringement attracting civil and/or criminal liabilities.
<p><i>Specific Question under Section 48 for Public Consultation:</i> Q1. Should we apply the 10 per cent illustration to the definition of “a reasonable proportion of a work” in favour of the existing “word-counting” approach? Should the deeming approach or the definitive approach be adopted? Alternatively, should we leave the term “reasonable proportion” undefined and determine it on a case-by-case basis?</p>		
Section 50 Copying by librarians: supply of copies to other libraries	Nil.	(a) The recipient library furnishes the supplying library with a signed declaration to the effect that – <ul style="list-style-type: none"> (i) it is a specified recipient library for the purpose of section 50; (ii) it has not previously been supplied with the same copy, or if it was previously supplied with the same copy, such copy has been lost, damaged or destroyed; and (iii) after conducting reasonable enquiries, it cannot obtain the work within a reasonable time at an ordinary commercial price or it is not reasonably practicable to purchase a copy of the work.

Section No.	Existing conditions under the Ordinance ¹⁶	Proposed supplementary conditions and matters to be prescribed in the new Regulations
		<p>(b) The recipient library is not furnished with more than one copy of the same material which it has requested the supplying library to supply.</p> <p>(c) If the supplying library elects to charge the recipient library a sum for the making and the supply of the copy as requested by the recipient library, the charge shall be a sum not more than the cost (including a contribution to the general expenses of the supplying library) attributable to the production of the copy.²⁴</p> <p>(d) Section 50(2) provides that the permitted act does not apply if the supplying library knows, or could by reasonable enquiry ascertain, the name and address of a person entitled to authorise the making of the copy. By the same token, we consider that the recipient library requesting for a copy should also have to show a good cause in support of its request. As such, we consider it reasonable to impose an obligation requiring the recipient libraries under paragraph (a)(iii) above to declare that they have conducted</p>

²⁴ This proposed condition seeks to provide the supplying library with a flexible option to charge the recipient library for a sum for making and supplying the copy, whereas the same condition at the same time requires that any such charge should be reasonable, thereby preventing any supplying library from acquiring unreasonable gain due to an abuse of the permitted act. Such approach in restricting the charging level is also adopted in the respective copyright legislation in Australia, Singapore and the UK.

Section No.	Existing conditions under the Ordinance ¹⁶	Proposed supplementary conditions and matters to be prescribed in the new Regulations
		<p>reasonable inquiry in the market before requesting for supply of copies.²⁵</p> <p>(e) Where a specified library requests for an electronic copy pursuant to section 50, we propose adding additional conditions similar to those specified in section 47 above to the effect that when an electronic copy is supplied to the specified library, a notice must be given to the same stating that—</p> <p>(i) the copy must not be further reproduced, communicated or otherwise disseminated without licence of the copyright owner or where no applicable permitted act applies; and</p> <p>(ii) any unauthorised reproduction, communication or otherwise dissemination of the copy may constitute copyright infringement attracting civil and/or criminal liabilities.</p>

²⁵ A similar condition is prescribed in the corresponding statutes in Australia and New Zealand.

2. Proposed Prescribed Conditions for Libraries, Museums and Archives (for Sections 51, 51A, 52, 52A, 53, 245B and 246)

Section No.	Existing conditions under the Ordinance	Proposed supplementary conditions and matters to be prescribed in the new Regulations
<p>Section 51</p> <p>Copying by librarians, curators or archivists: preservation or replacement copies of works</p>	<p>(a) The items being copied are in the permanent collection of the specified libraries, museums or archives (section 51(1)); and</p> <p>(b) it is not reasonably practicable for the specified libraries, museums or archives to purchase a copy of the item in question for the purpose of preservation or replacement (section 51(2)).</p>	<p>(a) For the making and the supply of a preservation/replacement copy of an item in the permanent collection of a sourcing library, museum or archive to a recipient library, museum or archive -</p> <p>(i) The recipient library, museum or archive must show a good cause for requesting the supply of the relevant copy by furnishing the sourcing library, museum or archive with a signed declaration to the effect that:</p> <ul style="list-style-type: none"> - it is a specified recipient library, museum or archive for the purpose of section 51; - the item in their permanent collection has been lost, destroyed or damaged; - it is not reasonably practicable for the recipient library, museum or archive to purchase a copy of the item in question; and - if a copy of the item is supplied, it will only be used to replace the item in their permanent collection.

Section No.	Existing conditions under the Ordinance	Proposed supplementary conditions and matters to be prescribed in the new Regulations
		<p>(ii) If the sourcing library, museum or archive elects to charge the recipient library, museum or archive a sum for the making and the supply of the copy as requested by the recipient library, museum or archive, the charge shall be a sum not more than the cost (including a contribution to the general expenses of the sourcing library, museum or archive) attributable to the production of the copy.²⁶</p> <p><i>Proposed definition for “permanent collection” under section 51(1)</i></p> <p>(b) One of the mandatory conditions under section 51 is that the items being copied are in the permanent collection of the specified sourcing libraries, museums or archives. While the Ordinance does not provide a definition for “permanent collection”, such term apparently refers to works that are considered as unique, valuable or worthwhile to be preserved in the collection of a specified library, museum or archive on a permanent basis and are mainly or wholly kept for on-the-spot reference use rather than for general lending to the public.</p>

²⁶ A similar condition is also prescribed by the copyright legislation in the UK.

Section No.	Existing conditions under the Ordinance	Proposed supplementary conditions and matters to be prescribed in the new Regulations
		<p>(c) The term “permanent collection” is likewise not expressly defined in the UK CDPA, and the corresponding UK provision provides for a condition that for the permitted act to apply, the item has to be one which is -</p> <ul style="list-style-type: none"> (i) included in the part of the collection kept wholly or mainly for the purposes of reference on the premises of libraries, archives or museums; (ii) included in a part of the collection not accessible to the public; or (iii) available on loan only to other libraries, archives or museums. <p>(d) To provide certainty to librarians, curators and archivists, we propose to introduce a definition of “permanent collection” in the new Regulations. We have made reference to the UK approach which we consider in alignment with the fundamental characteristics and features of “permanent collection” as stated in paragraph (b) above. Our proposed definition is as follows:</p>

Section No.	Existing conditions under the Ordinance	Proposed supplementary conditions and matters to be prescribed in the new Regulations
		<ul style="list-style-type: none"> <li data-bbox="1240 293 2119 517">(i) collection of cultural or historical significance or importance, and maintained by a specified library, museum or archive wholly or mainly for the purpose of reference on the premises of the library, museum or archive; or <li data-bbox="1240 580 2119 756">(ii) collection of cultural or historical significance or importance, of a specified library, museum or archive, which are available on loan only to other libraries, museums or archives. <li data-bbox="1178 820 2119 1091">(e) Where a specified library, museum or archive requests for an electronic copy pursuant to section 51, we propose adding additional conditions similar to those specified in section 47 above to the effect that when an electronic copy is supplied to the specified library, museum or archive, a notice must be given to the same stating that— <ul style="list-style-type: none"> <li data-bbox="1240 1155 2119 1331">(i) the copy has been supplied solely for the purposes of replacing in the permanent collection of the specified library, museum or archive an item which has been lost, destroyed or damaged;

Section No.	Existing conditions under the Ordinance	Proposed supplementary conditions and matters to be prescribed in the new Regulations
		<p>(ii) the copy must not be further reproduced, communicated or otherwise disseminated without licence of the copyright owner or where no applicable permitted act applies; and</p> <p>(iii) any unauthorised reproduction, communication or otherwise dissemination of the copy may constitute copyright infringement attracting civil and/or criminal liabilities.</p>
	<p><i>Specific Question under Section 51 for Public Consultation:</i> Q2. Should the term “permanent collection” be defined according to the proposed definition under paragraph (d) above?</p>	
<p>Section 51A</p> <p>Communication by librarians, curators or archivists: copies of works</p>	<p>Section 51A provides for the following conditions and safeguard:</p> <p>(a) only one user may access the copy at any one time (section 51A(2)(a));</p> <p>(b) the specified library, museum or archive</p>	<p>We consider that the existing conditions prescribed by section 51A are sufficient, and therefore do not propose imposing any supplementary conditions in the new Regulations for section 51A.</p>

Section No.	Existing conditions under the Ordinance	Proposed supplementary conditions and matters to be prescribed in the new Regulations
	<p>takes appropriate measures to prevent users from making further copies or communicating the copy to others (section 51A(2)(b)); and</p> <p>(c) communicating to users and staff of a specified library, museum or archive is not authorised by section 51A if, or to the extent that, licences under licensing schemes are available authorising the communication in question and the person making the communication in question knew or ought to have been aware of that fact (section 51A(3)).</p>	
<p>Section 52</p> <p>Copying by librarians, curators or archivists: certain</p>	<p>(a) Copies are supplied only to persons satisfying the librarians, curators or archivists that they require the copies for purposes of research or private study and will not use the copies for any other purpose (section 52(3)(a));</p>	<p>(a) To avoid repetitive and unnecessary requests by library, museum or archive users for the same copies of materials, we propose prescribing the following supplementary condition for section 52 in the new Regulations:</p> <ul style="list-style-type: none"> - Persons requesting for copies pursuant to section 52 should further satisfy the librarians, curators or archivists that they

Section No.	Existing conditions under the Ordinance	Proposed supplementary conditions and matters to be prescribed in the new Regulations
unpublished works	<p>(b) no person is furnished with more than one copy of the same material (section 52(3)(b)); and</p> <p>(c) persons to whom copies are supplied are required to pay for the copies a sum (including a contribution to the general expenses of the library, museum or archive) not less than the cost attributable to the production of the copies (section 52(3)(c)).</p>	<p>have not previously been supplied with the same copies, or if they were previously supplied with the same copies, such copies have already been lost, damaged or destroyed.</p> <p>(b) For the purpose of satisfying the librarians, curators or archivists as to the matters referred to in paragraph (a) of the existing conditions under section 52 and paragraph (a) above, the new Regulations shall further require any person requesting the copy to fill in a declaration in writing as to the aforesaid matters, sign it and deliver the same to the librarians, curators or archivists. The librarians, curators or archivists may then rely on the signed declarations unless they are aware that the declarations are false in a material particular pursuant to section 46(3)(a)(i).</p> <p>(c) The same consideration as to allowing specified libraries, museums and archives to prescribe their own declaration forms (see section 47 in Part 2(1) above) is also relevant to section 52.</p> <p>(d) We also propose adding additional conditions for the supply of electronic copies as stated in section 47 above to the effect that when an electronic copy is supplied to the specified library, museum or archive, a notice must be given to the same stating</p>

Section No.	Existing conditions under the Ordinance	Proposed supplementary conditions and matters to be prescribed in the new Regulations
		<p>that—</p> <ul style="list-style-type: none"> (i) the electronic copy has been provided pursuant to section 52(1) solely for the purposes of research or private study; (ii) the copy must not be used for any other purpose; (iii) the copy must not be further reproduced, communicated or otherwise disseminated without licence of the copyright owner or where no applicable permitted act applies; and (iv) any unauthorised reproduction, communication or otherwise dissemination of the copy may constitute copyright infringement attracting civil and/or criminal liabilities.
<p>Section 52A</p> <p>Playing or showing by librarians,</p>	<p>Section 52A provides for the following conditions and safeguard:</p> <p>(a) if the audience is required to pay for the playing or showing of the sound recording</p>	<p>We consider that the existing conditions prescribed by section 52A are sufficient, and therefore do not propose imposing any supplementary conditions in the new Regulations for section 52A.</p>

Section No.	Existing conditions under the Ordinance	Proposed supplementary conditions and matters to be prescribed in the new Regulations
curators or archivists: sound recordings or films	<p>or film, the payment required is no more than a reasonable contribution towards the maintenance of the library, museum or archive (section 52A(2)); and</p> <p>(b) the playing or showing of a sound recording or film is not authorised by section 52A if, or to the extent that, licences under licensing schemes are available authorising the playing or showing in question and the person playing or showing the sound recording or film in question knew or ought to have been aware of that fact (section 52A(3)).</p>	
Section 245B(1) and (2) Communication, playing or showing by librarians,	<p>C.f. existing conditions in sections 51A and 52A above.</p>	<p>With the same consideration as sections 51A and 52A, we do not propose introducing any supplementary condition to section 245B(1) and (2) (which respectively mirror sections 51A and 52A).</p>

Section No.	Existing conditions under the Ordinance	Proposed supplementary conditions and matters to be prescribed in the new Regulations
curators or archivists: sound recordings or films		
Sections 53 and 246 Copying by librarians, curators or archivists: articles of cultural or historical importance	<p>(a) The article is of cultural or historical importance or interest; and</p> <p>(b) such article is likely to be lost to Hong Kong through sale or export.</p>	<p>We consider that the existing conditions in sections 53 and 246 (which mirrors section 53) are sufficient, and therefore do not propose introducing any supplementary condition to both sections 53 and 246.</p>