

Project on Cybercrime

www.coe.int/cybercrime



COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

First draft (28 March 2008)

Cybercrime legislation – country profile

People's Republic of CHINA

This profile has been prepared within the framework of the Council of Europe's Project on Cybercrime in view of sharing information on cybercrime legislation and assessing the current state of implementation of the Convention on Cybercrime under national legislation. It does not necessarily reflect official positions of the country covered or of the Council of Europe.

Comments may be sent to:

Alexander Seger
Department of Technical Cooperation
Directorate General of Human Rights and Legal Affairs
Council of Europe, Strasbourg, France

Tel: +33-3-9021-4506
Fax: +33-3-9021-5650
Email: alexander.seger@coe.int
www.coe.int/cybercrime

Country:	People's Republic of CHINA	
Signature of Convention:		No: ____X____
Ratification/accession:		No: ____X____
Provisions of the Convention	Corresponding provisions/solutions in national legislation <i>(pls quote or summarise briefly; pls attach relevant extracts as an appendix)</i>	
<i>Chapter I – Use of terms</i>		
Article 1 – “Computer system”, “computer data”, “service provider”, “traffic data”	Art.2 of Regulations on Safeguarding computer Information Systems, Feb.1996.	
<i>Chapter II – Measures to be taken at the national level</i>		
<i>Section 1 – Substantive criminal law</i>		
Article 2 – Illegal access	Art.285 of Criminal Law of the People's Republic of China	
Article 3 – Illegal interception	Art.252 of Criminal Law of the People's Republic of China	
Article 4 – Data interference	Art.286 of Criminal Law of the People's Republic of China	
Article 5 – System interference	Art.286 of Criminal Law of the People's Republic of China	
Article 6 – Misuse of devices	There is no provision related in China legislation	
Article 7 – Computer-related forgery	Art. 287 “or other crimes” of Criminal Law of the People's Republic of China.	
Article 8 – Computer-	Art. 287 “or other crimes” of Criminal Law of the People's Republic of	

related fraud	China.
Article 9 – Offences related to child pornography	Art.363, 364, 366, 367 of Criminal Law of the People’s Republic of China
Title 4 – Offences related to infringements of copyright and related rights	
Article 10 – Offences related to infringements of copyright and related rights	Art.217,218,220 of Criminal Law of the People’s Republic of China. Art.1 “protecting the copyright of authors in their literary, artistic and scientific works and the copyright-related rights and interests” of Copyright Law of the People’s Republic of China. See also Art.3, Art. 9, Art. 10(5) “by any other means”, (6) “the right of distribution” of Copyright Law of the People’s Republic of China. For Art. 10(2)- Art.10(11-12), (15); Art.12 “adaptation, translation” of Copyright Law of the People’s Republic of China. Also Art.11 “the copyright in a work shall belong to its author” and Art. 20; Art.24(2) of Copyright Law of the People’s Republic of China.
Article 11 – Attempt and aiding or abetting	Art.22,23,24,27,29 of Criminal Law of the People’s Republic of China
Article 12 – Corporate liability	Art.30,31 of Criminal Law of the People’s Republic of China
Article 13 – Sanctions and measures	Art.32,33,34 of Criminal Law of the People’s Republic of China
<i>Section 2 – Procedural law</i>	
Article 14 – Scope of procedural provisions	There is no provision related in China legislation
Article 15 – Conditions and safeguards	There is no provision related in China legislation
Article 16 – Expedited preservation of stored computer data	There is no provision related in China legislation
Article 17 – Expedited preservation and partial disclosure of traffic data	Art.14 of Regulation on Internet Information Service of the People’s Republic of China, Art.19 of Working Rules on Interim Regulation of International Networking of Computer Information Network, Art.10 of Regulations on Internet Surfer Service Sites, Art.14,15 of Provisions for the Administration of Internet Electronic Bulletin
Article 18 – Production order	There is no provision related in China legislation
Article 19 – Search and seizure of stored computer data	Art. 116 of Criminal Procedure Law of the People’s Republic of China, Art. 188, 192 of People’s Procuratorate Rules of Criminal Procedure, Art. 57,58 of Procedural Rules for Criminal Cases by Public Security Organs,
Article 20 – Real-time collection of traffic data	Art. 10 of State Security Law of the People’s Republic of China, Art. 16 of People’s Police Law of the People’s Republic of China
Article 21 – Interception of content data	Art. 10 of State Security Law of the People’s Republic of China, Art. 16 of People’s Police Law of the People’s Republic of China
<i>Section 3 – Jurisdiction</i>	
Article 22 – Jurisdiction	Art.6, 7, 8, 9, 10, 11, 12 of Criminal Law of the People’s Republic of China
<i>Chapter III – International co-operation</i>	
Article 24 – Extradition	Article 3,4,5,7,8,9 of Extradition Law of the People’s Republic of China

Article 25 – General principles relating to mutual assistance	There is no provision related in China legislation
Article 26 – Spontaneous information	There is no provision related in China legislation
Article 27 – Procedures pertaining to mutual assistance requests in the absence of applicable international agreements	There is no provision related in China legislation
Article 28 – Confidentiality and limitation on use	There is no provision related in China legislation
Article 29 – Expedited preservation of stored computer data	There is no provision related in China legislation
Article 30 – Expedited disclosure of preserved traffic data	There is no provision related in China legislation
Article 31 – Mutual assistance regarding accessing of stored computer data	There is no provision related in China legislation
Article 32 – Trans-border access to stored computer data with consent or where publicly available	There is no provision related in China legislation
Article 33 – Mutual assistance in the real-time collection of traffic data	There is no provision related in China legislation
Article 34 – Mutual assistance regarding the interception of content data	There is no provision related in China legislation
Article 35 – 24/7 Network	There is no provision related in China legislation
Article 42 – Reservations	

Country:	Example of Hong Kong	
Signature of Convention:	Yes: _____	No: _____X__
Ratification/accession:	Yes: _____	No: _____X__
Provisions of the Convention	Corresponding provisions/solutions in national legislation <i>(pls quote or summarise briefly; pls attach relevant extracts as an appendix)</i>	
<i>Chapter I – Use of terms</i>		
Article 1 – “Computer system”, “computer data”, “service provider”, “traffic data”	Chapter 200, Section 59(1/a and b) and 59(1A) of Basic Law of Hong Kong.	
<i>Chapter II – Measures to be taken at the national level</i>		
<i>Section 1 – Substantive criminal law</i>		
Article 2 – Illegal access	Chapter 106, Section 27A of Basic Law of Hong Kong. See also Chapter 200, Section 161(1/a-b) of Basic Law of Hong Kong.	
Article 3 – Illegal interception		
Article 4 – Data interference	Chapter 200, Section 60(1) of Basic Law of Hong Kong. See also Chapter 210, Section 11(3A/a-c) and (4) of Basic Law of Hong Kong.	
Article 5 – System interference	Chapter 210, Section 11(1/a “such offence”, c “damage” and “anything therein”) and (3A/a), (4) of Basic Law of Hong Kong.	
Article 6 – Misuse of devices	For Art.6(a)- Chapter 200, Section 161(1/a-b) of Basic Law of Hong Kong. For Art.6(a/ii)- Chapter 210, Section 19(1/b) and (3) of Basic Law of Hong.	
Article 7 – Computer-related forgery	Chapter 210, Section 19(2-3) of Basic Law of Hong.	
Article 8 – Computer-related fraud	For Art.8(b)- Chapter 200, Section 161(1/c) of Basic Law of Hong Kong.	
Article 9 – Offences related to child pornography	For Art.9(1)- Chapter 390, Article 21(1) and Art.23(1) of the Penal Code of Hong Kong. See also “Internet”.	
Title 4 – Offences related to infringements of copyright and related rights		
Article 10 – Offences related to infringements of copyright and related rights	Chapter 528, Section 2(1), also Section 35(3-4) of of Basic Law of Hong Kong. For Art. 10(1)- Chapter 528, Section 35A(6) of of Basic Law of Hong Kong.	
Article 11 – Attempt and aiding or abetting	For Art.11(2)- Chapter 200, Section 159G(1-3) of Basic Law of Hong Kong.	
Article 12 – Corporate liability		
Article 13 – Sanctions and measures		
<i>Section 2 – Procedural law</i>		
Article 14 – Scope of procedural provisions		
Article 15 – Conditions and		

safeguards	
Article 16 – Expedited preservation of stored computer data	
Article 17 – Expedited preservation and partial disclosure of traffic data	
Article 18 – Production order	
Article 19 – Search and seizure of stored computer data	
Article 20 – Real-time collection of traffic data	
Article 21 – Interception of content data	
<i>Section 3 – Jurisdiction</i>	
Article 22 – Jurisdiction	
<i>Chapter III – International co-operation</i>	
Article 24 – Extradition	
Article 25 – General principles relating to mutual assistance	For Art. 25(1)- Chapter 525, Section 2(1/a “the restraining...”) of Basic Law of Hong Kong. For Art. 25(3)- Chapter 525, Section 2 (1/b “in the case...”- “... and that place”) and “criminal matter” and (3), also Chapter 525, Section 3 of Basic Law of Hong Kong. For Art. 25(4)- Chapter 525, Section 2(7) of Basic Law of Hong Kong.
Article 26 – Spontaneous information	
Article 27 – Procedures pertaining to mutual assistance requests in the absence of applicable international agreements	
Article 28 – Confidentiality and limitation on use	
Article 29 – Expedited preservation of stored computer data	
Article 30 – Expedited disclosure of preserved traffic data	
Article 31 – Mutual assistance regarding accessing of stored computer data	
Article 32 – Trans-border access to stored computer data with consent or where publicly available	
Article 33 – Mutual	

assistance in the real-time collection of traffic data	
Article 34 – Mutual assistance regarding the interception of content data	
Article 35 – 24/7 Network	
Article 42 – Reservations	

Appendix 1: Solutions in national legislation.

CHINA

Criminal Law of the People's Republic of China

(Adopted by the Second Session of the Fifth National People's Congress on July 1, 1979 and amended by the Fifth Session of the Eighth National People's Congress on March 14, 1997)

PART ONE GENERAL PROVISIONS

Chapter I The Aim, Basic Principles and Scope of Application of the Criminal Law

Article 6 This Law shall be applicable to anyone who commits a crime within the territory and territorial waters and space of the People's Republic of China, except as otherwise specifically provided by law.

This Law shall also be applicable to anyone who commits a crime on board a ship or aircraft of the People's Republic of China.

If a criminal act or its consequence takes place within the territory or territorial waters or space of the People's Republic of China, the crime shall be deemed to have been committed within the territory and territorial waters and space of the People's Republic of China.

Article 7 This Law shall be applicable to any citizen of the People's Republic of China who commits a crime prescribed in this Law outside the territory and territorial waters and space of the People's Republic of China; however, if the maximum punishment to be imposed is fixed-term imprisonment of not more than three years as stipulated in this Law, he may be exempted from investigation for his criminal responsibility.

This Law shall be applicable to any State functionary or serviceman who commits a crime prescribed in this Law outside the territory and territorial waters and space of the People's Republic of China.

Article 8 This Law may be applicable to any foreigner who commits a crime outside the territory and territorial waters and space of the People's Republic of China against the State of the People's Republic of China or against any of its citizens, if for that crime this Law prescribes a minimum punishment of fixed-term imprisonment of not less than three years; however, this does not apply to a crime that is not punishable according to the laws of the place where it is committed.

Article 9 This Law shall be applicable to crimes which are stipulated in international treaties concluded or acceded to by the People's Republic of China and over which the People's Republic of China exercises criminal jurisdiction within the scope of obligations, prescribed in these treaties, it agrees to perform.

Article 10 Any person who commits a crime outside the territory and territorial waters and space of the People's Republic of China, for which according to this Law he should bear criminal responsibility, may still be investigated for criminal responsibility according to this Law, even if he has already been tried in a foreign country. However, if he has already received criminal punishment in the foreign country, he may be exempted from punishment or given a mitigated punishment.

Article 11 The criminal responsibility of foreigners who enjoy diplomatic privileges and immunities shall be solved through diplomatic channels.

Article 12 If an act committed after the founding of the People's Republic of China and before the entry into force of this Law was not deemed a crime under the laws at the time, those laws shall apply. If the act was deemed a crime under the laws in force at the time and is subject to prosecution under the provisions of Section 8, Chapter IV of General Provisions of this Law, criminal responsibility shall be investigated in accordance with those laws. However, if according to this Law the act is not deemed a crime or is subject to a lighter punishment, this Law shall apply.

Before the entry into force of this Law, any judgement that has been made and has become effective according to the laws at the time shall remain valid.

Chapter II Crimes

Section 2 Preparation for a Crime, Criminal Attempt and Discontinuation of a Crime

Article 22 Preparation for a crime refers to the preparation of the instruments or the creation of the conditions for a crime.

An offender who prepares for a crime may, in comparison with one who completes the crime, be given a lighter or mitigated punishment or be exempted from punishment.

Article 23 A criminal attempt refers to a case where an offender has already started to commit a crime but is prevented from completing it for reasons independent of his will.

An offender who attempts to commit a crime may, in comparison with one who completes the crime, be given a lighter or mitigated punishment.

Article 24 Discontinuation of a crime refers to a case where, in the course of committing a crime, the offender voluntarily discontinues the crime or voluntarily and effectively prevents the consequences of the crime from occurring.

An offender who discontinues a crime shall, if no damage is caused, be exempted from punishment or, if damage is caused, be given a mitigated punishment.

Section 3 Joint Crimes

Article 27 An accomplice refers to any person who plays a secondary or auxiliary role in a joint crime.

An accomplice shall be given a lighter or mitigated punishment or be exempted from punishment.

Article 29 Anyone who instigates another to commit a crime shall be punished according to the role he plays in a joint crime. Anyone who instigates a person under the age of 18 to commit a crime shall be given a heavier punishment.

If the instigated person has not committed the instigated crime, the instigator may be given a lighter or mitigated punishment.

Section 4 Crimes Committed by a Unit

Article 30 Any company, enterprise, institution, State organ, or organization that commits an act that endangers society, which is prescribed by the law as a crime committed by a unit, shall bear criminal responsibility.

Article 31 Where a unit commits a crime, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the crime shall be given criminal

punishment. Where it is otherwise provided in the Specific Provision of this law or in other laws, those provisions shall prevail.

Chapter III Punishments

Section 1 Types of Punishments

Article 32 Punishment are divided into principal punishments and supplementary punishments.

Article 33 The principal punishments are as follows:

- (1) public surveillance;
- (2) criminal detention;
- (3) fixed-term imprisonment;
- (4) life imprisonment; and
- (5) the death penalty.

Article 34 The supplementary punishments are as follows:

- (1) fine;
- (2) deprivation of political rights; and
- (3) confiscation of property.

Supplementary punishments may be imposed independently.

PART TWO SPECIFIC PROVISIONS

Chapter III Crime of Disrupting the Order of the Socialist Market Economy

Section 7 Crime of Infringing on Intellectual Property Rights

Article 217 Whoever for the purpose of making profits, commits any of the following acts of infringement on the copyright shall, if the amount of illegal gains is relatively large, or if there are other serious circumstances, be sentenced to fixed-term imprisonment of not more than three years of criminal detention and shall also, or shall only, be fined; if the amount of illegal gains is huge or if there are other especially serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined:

- (1) reproducing and distributing a written work, musical work, motion picture, television programme or other visual works, computer software or other works without permission of the copyright owner;
- (2) publishing a book of which the exclusive right of publication is enjoyed by another person;
- (3) reproducing and distributing an audio or video recording produced by another person without permission of the producer;
- (4) producing or selling a work of fine art with forged signature of another painter.

Article 218 Whoever, for the purpose of making profits, knowingly sells works reproduced by infringing on the copyright of the owners as mentioned in Article 217 of this law shall, if the amount of illegal gains is huge, be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined.

Article 220 Where a unit commits any of the crimes mentioned in the Article from 213 through 219 of this Section, it shall be fined, and the person who are directly in charge and the other

persons who are directly responsible for the crime shall be punished in accordance with the provision of the Article respectively.

Chapter IV Crimes of Infringing upon Citizens' Right of the Person and Democratic Rights

Article 252. Whoever conceals, destroys or unlawfully opens another person's letter, thereby infringing upon the citizen's right to freedom of correspondence, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than one year or criminal detention.

Chapter VI Crimes of Disrupting the Order of Social Administration

Section 1. Crimes of Disrupting Public Order

Article 285. Whoever in violation of State regulations, invades the computer information system in the fields of State affairs, national defence construction or sophisticated science and technology shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention.

Article 286. Whoever in violation of States regulations, deletes, alters, adds or jams the functions of the computer information system, thereby making it impossible for the system to operate normally, if the consequences are serious, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; if the consequences are especially serious, he shall be sentenced to fixed-term imprisonment of not less than five years.

Whoever, in violation of State regulations, delete, alters or adds the data stored in or handled or transmitted by the computer information system or its application program, if the consequences are serious, shall be punished in accordance with the provision of the preceding paragraph.

Whoever intentionally creates or spreads destructive programs such as the computer viruses, thus affecting the normal operation of the computer system, if the consequences are serious, shall be punished in accordance with the provision of the first paragraph.

Article 287. Whoever uses computers to commit the crimes such as financial fraud, theft, embezzlement, misappropriation of public funds, theft of State secrets, or other crimes shall be convicted and punished in accordance with the relevant provisions of this Law.

Section 9 Crimes of Producing, Selling or Dissemination Pornographic Materials

Article 363. Whoever, for the purpose of profit, produces, duplicates, publishes, sells or disseminates pornographic materials shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also be fined; if the circumstance are serious, he shall be sentenced to fixed-term imprisonment of not less than three year but not more than 10 years and shall also be fined; if the circumstance are especially serious, he shall be sentenced to fixed-term imprisonment of more than 10 years or life imprisonment, and shall also be fined or sentenced to confiscation of property.

Whoever provides book numbers for another person to publish pornographic books or periodicals shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also, or shall only, be fined; whoever knowingly provides books numbers to another person who will use them for publishing pornographic books or periodicals shall be punished in accordance with the provisions of the preceding paragraph.

Article 364. Whoever disseminates pornographic materials including books, periodicals, movies, video-audio tapes and pictures, if the circumstance are serious, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance.

Whoever arranges for shows of pornographic audio-video products including movies and video-tapes shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also be fined; if the circumstance are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined.

Whoever produces or duplicates pornographic audio-video products including movies and video-tapes and arranges for their show shall be given a heavier punishment in accordance with the provisions of the second paragraph of this Article.

Whoever disseminates pornographic materials to a minor under the age of 18 shall be given a heavier punishment.

Article 366. Where a unit commits any of the crimes mentioned in Articles 363, 364 and 365 of this Section, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the offence shall be punished in accordance with the provisions of the Articles respectively.

Article 367. For purpose of this Law, pornographic materials refer to obscene books, periodicals, movies, video-audio-tapes, pictures, etc. that explicitly portray sexual behaviour or undisguisedly publicize pornographic materials.

Scientific works on human physiology or medical knowledge are not pornographic materials.

Literary and art works of artistic value which contain erotic contents shall not be regarded as pornographic materials.

Regulations on Safeguarding Computer Information Systems

[Regulations on Protection of Computer Information System Security]

February 1996

Chapter I. General Provisions

Article 1. These regulations have been formulated to safeguard computer information systems, to promote the application and development of computers, and to ensure smooth progress in socialist modernization.

Article 2. The computer information systems referred to in these regulations are man-machine systems, composed of computers and their allied and peripheral equipment and facilities (including networks), that collect, process, store, transmit, and retrieve information according to prescribed goals and rules of application.

Article 3. In safeguarding computer information systems, measures shall be taken to secure computers, allied and peripheral equipment and facilities (including networks), the operating environment, and data, as well as to ensure the normal functioning of computers, so as to safeguard the safe operation of computer information systems .

Article 4. In safeguarding computer information systems, priority shall be given to the security of computer systems containing data on such important areas as state affairs, economic construction, national defense, and state-of-the-art science and technology.

Article 5. These regulations shall apply to safeguarding computer information systems within the PRC's borders.

Measures for safeguarding microcomputers that have not been hooked up shall be enacted separately.

Article 6. The Ministry of Public Security shall be in charge of safeguarding computer information systems.

The Ministry of State Security, the State Secrecy Bureau, and relevant State Council departments shall carry out work pertaining to safeguarding computer information systems within the lines of authority prescribed by the State Council.

Article 7. No organization or individual may use computer information systems to engage in activities that endanger national or collective interests, as well as the legitimate interests of citizens; they may not jeopardize computer information systems.

Chapter II. The Safeguards System

Article 13. Units that use computer information systems shall establish security management systems and assume responsibility for safeguarding their computer information systems.

Article 14. Units that use computer information systems shall report any incidents relating to their systems to the public security departments of local people's governments at or above the county level within 24 hours of the incidents.

Chapter III. Supervision Over Security

Article 17. Public security organs shall perform the following functions to supervise efforts to safeguard computer information systems:

- (1) Supervising, inspecting, and guiding the work of safeguarding computer information systems;
- (2) Investigating and dealing with illegal and criminal cases involving the endangerment of computer information systems; and
- (3) Other supervisory functions with regard to safeguarding computer information systems.

Article 18. Upon detecting latent hazards in computer information systems, public security organs shall promptly advise the units that use such systems to institute safety measures.

Article 19. Under urgent circumstances, the Ministry of Public Security may issue special circulars on specific security aspects of computer information systems.

Chapter IV. Legal Responsibilities

Article 20. In the event of any of the following violations of the provisions in these regulations, public security organs shall issue warnings or shut down the computers for screening purposes:

- (1) Contravening the system for protecting computer information systems based on security grades and jeopardizing computer information systems;
- (2) Violating the registration system for internationally networked computer information systems;
- (3) Failing to report incidents related to computer information systems within the prescribed time frames;

(4) Failing to take remedial action within the prescribed time after receiving notification from public security organs mandating security improvement measures;

(5) Other actions endangering computer information systems.

Article 25. Any organization or individual who inflicts property losses on the state, collectives, or other individuals in violation of the provisions in these regulations shall assume civil responsibility in accordance with the law.

Article 29. Military-related computer information systems shall be safeguarded in accordance with relevant military laws and regulations.

Computer Information Network and Internet Security, Protection and Management Regulations

(Approved by the State Council on December 11 1997 and promulgated by the Ministry of Public Security on December 30, 1997)

Chapter One -- Comprehensive Regulations

Article 1. In order to strengthen the security and the protection of computer information networks and of the Internet, and to preserve the social order and social stability, these regulations have been established on the basis of the "PRC Computer Information Network Protection Regulations", the "PRC Temporary Regulations on Computer Information Networks and the Internet" and other laws and administrative regulations.

Article 3. The computer management and supervision organization of the Ministry of Public Security is responsible for the security, protection and management of computer information networks and the Internet. The Computer Management and Supervision organization of the Ministry of Public Security should protect the public security of computer information networks and the Internet as well as protect the legal rights of Internet service providing units and individuals as well as the public interest.

Article 4. No unit or individual may use the Internet to harm national security, disclose state secrets, harm the interests of the State, of society or of a group, the legal rights of citizens, or to take part in criminal activities.

Article 5. No unit or individual may use the Internet to create, replicate, retrieve, or transmit the following kinds of information:

- (1) Inciting to resist or breaking the Constitution or laws or the implementation of administrative regulations;
- (2) Inciting to overthrow the government or the socialist system;
- (3) Inciting division of the country, harming national unification;
- (4) Inciting hatred or discrimination among nationalities or harming the unity of the nationalities;
- (5) Making falsehoods or distorting the truth, spreading rumors, destroying the order of society;
- (6) Promoting feudal superstitions, sexually suggestive material, gambling, violence, murder,
- (7) Terrorism or inciting others to criminal activity; openly insulting other people or distorting the truth to slander people;
- (8) Injuring the reputation of state organs;
- (9) Other activities against the Constitution, laws or administrative regulations.

Chapter Two -- Responsibility for Security and Protection

Article 8. Units and individuals engaged in Internet business must accept the security supervision, inspection, and guidance of the Public Security organization. This includes providing to the Public Security organization information, materials and digital document, and assisting the Public Security

organization to discover and properly handle incidents involving law violations and criminal activities involving computer information networks.

Article 11. The network user should fill out a user application form when applying for network services. The format of this application form is determined by Public Security.

Article 12. Connecting network units, entry point units, and corporations that use computer information networks and the Internet and other organizations (including connecting network units that are inter-provincial, autonomous region, municipalities directly under the Central Government or the branch organization of these units) should, within 30 days of the opening of network connection, carry out the proper registration procedures with a unit designated by the Public Security organization of the provincial, autonomous region, or municipality directly under the Central Government peoples' government. The units mentioned above have the responsibility to report for the record to the local public security organization information on the units and individuals which have connections to the network. The units must also report in a timely manner to Public Security organization any changes in the information about units or individuals using the network.

Chapter Four -- Legal

Article 21. Where one of the activities listed below has occurred, the Public Security organization should order that remedial action should be taken with a specific period and give a warning; if there has been illegal income, the income should be confiscated; if remedial action is not taken within the specified period, then a fine of not more than 5000 RMB may be assessed against the head of the unit and persons directly under the unit head and a fine of not more than 15,000 RMB against the unit; in the case of more offenses, the network and equipment can be closed for up to six months. In serious cases Public Security may suggest that the business license of the organization be canceled and its network registration canceled.

1. Not setting up a secure system
2. Not implementing security techniques and protection measures
3. Not providing security education and training for network users
4. Not providing information, materials or electronic documentation needed for security, protection and management or providing false information
5. For not inspecting the content of information transmitted on behalf of someone else or not registering the unit or individual on whose behalf the information was transmitted
6. Not establishing a system for registering users and managing the information of electronic bulletin boards.
7. Not removing web addresses and directories or not closing servers according to the relevant state regulations.
8. Not establishing a system for registering users of public accounts

Chapter Five -- Additional Regulations

Article 24. These regulations should be consulted with regards to the implementation of the security, protection and management of computer information networks connecting to networks in the Hong Kong Special Administrative Region as well as with networks in the Taiwan and Macao districts.

Copyright Law of the People's Republic of China

(Adopted at the Fifteenth Session of the Standing Committee of the Seventh National People's Congress on 7 September 1990, and revised in accordance with the Decision on the Amendment of the Copyright Law of the People's Republic of China adopted at the 24th Session of the Standing Committee of the Ninth National People's Congress on 27 October 2001.)

Chapter I General Provisions

Article 1. This Law is enacted, in accordance with the Constitution, for the purposes of protecting the copyright of authors in their literary, artistic and scientific works and the copyright-related rights and interests, of encouraging the creation and dissemination of works which would contribute to the construction of socialist spiritual and material civilization, and of promoting the development and prosperity of the socialist culture and science.

Article 2. Works of Chinese citizens, legal entities or other organizations, whether published or not, shall enjoy copyright in accordance with this Law.

Any work of a foreigner or stateless person which is eligible to enjoy copyright under an agreement concluded between the country to which the foreigner belongs or in which he has habitual residence and China, or under an international treaty to which both countries are party, shall be protected in accordance with this Law.

Works of foreigners or stateless persons first published in the territory of the People's Republic of China shall enjoy copyright in accordance with this Law.

Any work of a foreigner who belongs to a country which has not concluded an agreement with China, or which is not a party to an international treaty with China or a stateless person first published in an country which is a party to an international treaty with China, or in such a member state or nonmember state, shall be protected in accordance with this Law.

Article 3. For the purposes of this Law, the term "works" includes works of literature, art, natural science, social science, engineering technology and the like which are expressed in the following forms:

- (1) written works;
- (2) oral works;
- (3) musical, dramatic, quyi', choreographic and acrobatic works;
- (4) works of fine art and architecture;
- (5) photographic works;
- (6) cinematographic works and works created by virtue of an analogous method of film production;
- (7) drawings of engineering designs, and product designs; maps, sketches and other graphic works and model works;
- (8) computer software;
- (9) other works as provided for in laws and administrative regulations.

Article 4. Works the publication or distribution of which is prohibited by law shall not be protected by this Law.

Copyright owners, in exercising their copyright, shall not violate the Constitution or laws or prejudice the public interests.

Article 5. This Law shall not be applicable to:

- (1) laws; regulations; resolutions, decisions and orders of State organs; other documents of a legislative, administrative or judicial nature; and their official translations;
- (2) news on current affairs; and
- (3) calendars, numerical tables and forms of general use, and formulas.

Article 6. Regulations for the protection of copyright in expressions of folklore shall be established separately by the State Council.

Article 7. The copyright administration department under the State Council shall be responsible for the nationwide administration of copyright. The copyright administration department of the

People's Government of each province, autonomous region and municipality directly under the Central Government shall be responsible for the administration of copyright in its administrative region.

Article 8. The copyright owners and copyright-related right holders may authorize an organization for collective administration of copyright to exercise the copyright or any copyright-related right. After authorization, the organization for collective administration of copyright may, in its own name, claim the right for the copyright owners and copyright-related right holders, and participate, as an interested party, in litigation or arbitration relating to the copyright or copyright-related right.

The organization for collective administration of copyright is a non-profit organization. Provisions for the mode of its establishment, rights and obligations, collection and distribution of the royalties of copyright licensing, and supervision and administration thereof shall be separately established by the State Council.

Chapter II Copyright.

Section 1 Copyright Owners

Article 9. The term "copyright owners" shall include:

- (1) authors;
- (2) other citizens, legal entities and other organizations enjoying copyright in accordance with this Law.

Article 10. The term "copyright" shall include the following personality rights and property rights:

- (1) the right of publication, that is, the right to decide whether to make a work available to the public;
- (2) the right of authorship, that is, the right to claim authorship and to have the author's name mentioned in connection with the work;
- (3) the right of alteration, that is, the right to alter or authorize others to alter one's work;
- (4) the right of integrity, that is, the right to protect one's work against distortion and mutilation;
- (5) the right of reproduction, that is, the right to produce one or more copies of a work by printing, photocopying, lithographing, making a sound recording or video recording, duplicating a recording, or duplicating a photographic work or by any other means;
- (6) the right of distribution, that is, the right to make available to the public the original or reproductions of a work through sale or other transfer of ownership;
- (7) the right of rental, that is, the right to authorize, with payment, others to temporarily use cinematographic works, works created by virtue of an analogous method of film production, and computer software, except any computer software that is not the main subject matter of rental;
- (8) the right of exhibition, that is, the right to publicly display the original or reproduction of a work of fine art and photography;
- (9) the right of performance, that is, the right to publicly perform a work and publicly broadcast the performance of a work by various means;
- (10) the right of showing, that is, the right to show to the public a work, of fine art, photography, cinematography and any work created by analogous methods of film production through film projectors, over-head projectors or any other technical devices;
- (11) the right of broadcast, that is, the right to publicly broadcast or communicate to the public a work by wireless means, to communicate to the public a broadcast work by wire or relay means,

and to communicate to the public a broadcast work by a loudspeaker or by any other analogous tool used to transmit symbols, sounds or pictures;

(12) the right of communication of information on networks, that is, the right to communicate to the public a work, by wire or wireless means in such a way that members of the public may access these works from a place and at a time individually chosen by them;

(13) the right of making cinematographic work, that is, the right to fixate a work on a carrier by way of film production or by virtue of an analogous method of film production;

(14) the right of adaptation, that is, the right to change a work to create a new work of originality;

(15) the right of translation, that is, the right to translate a work in one language into one in another language;

(16) the right of compilation, that is, the right to compile works or parts of works into a new work by reason of the selection or arrangement; and

(17) any other rights a copyright owner is entitled to enjoy.

A copyright owner may authorize another person to exercise the rights under the preceding paragraphs (5) to (17), and receive remuneration pursuant to an agreement or this Law.

A copyright owner may assign, in part or in whole, the rights under the preceding paragraphs (5) to (17), and receive remuneration pursuant to an agreement or this Law.

Section 2 Ownership of Copyright

Article 11. Except where otherwise provided in this Law, the copyright in a work shall belong to its author.

The author of a work is the citizen who has created the Work.

Where a work is created according to the intention and under the supervision and responsibility of a legal entity or other organization, such legal entity or organization shall be deemed to be the author of the work.

The citizen, legal entity or other organization whose name is mentioned in connection with a work shall, in the absence of proof to the contrary, be deemed to be the author of the work.

Article 12. Where a work is created by adaptation, translation, annotation or arrangement of a preexisting work, the copyright in the work thus created shall be enjoyed by the adapter, translator, annotator or arranger, Provided that the exercise of such copyright shall not prejudice the copyright in the original work.

Article 13. Where a work is created jointly by two or more co-authors, the copyright in the work shall be enjoyed jointly by those co-authors. Co-authorship may not be claimed by anyone who has not participated in the creation of the work.

If a work of joint authorship can be separated into independent parts and exploited separately, each co-author shall be entitled to independent copyright in the parts that he has created, provided that the exercise of such copyright shall not prejudice the copyright in the joint work as a whole.

Article 14. A work created by compilation of several works, parts of works, data that do not constitute a work or other materials and having originality in the selection or arrangement of its contents is a work of compilation. The copyright in a work of compilation shall be enjoyed by the compiler, provided that the exercise of such copyright shall not prejudice the copyright in the preexisting works.

Article 15. The copyright in a cinematographic work and any work created by an analogous method of film production shall be enjoyed by the producer of the work, but the scriptwriter, director, cameraman, lyricist, composer, and other authors thereof shall enjoy the right of authorship in the work, and have the right to receive remuneration pursuant to the contract concluded with the producer.

The authors of the screenplay, musical works and other works that are incorporated in a cinematographic work and work created by virtue of an analogous method of film production and can be exploited separately shall be entitled to exercise their copyright independently.

Article 16. A work created by a citizen in the fulfillment of tasks assigned to him by a legal entity or other organization shall be deemed to be a work created in the course of employment. The copyright in such work shall be enjoyed by the author, subject to the provisions of the second paragraph of this Article, provided that the legal entity or other organization shall have a priority right to exploit the work within the scope of its professional activities. During the two years after the completion of the work, the author shall not, without the consent of the legal entity or other organization, authorize a third party to exploit the work in the same way as the legal entity or other organization does.

In any of the following cases the author of a work created in the course of employment shall enjoy the right of authorship, while the legal entity or other organization shall enjoy the other rights included in the copyright and may reward the author:

(1) drawings of engineering designs and product designs and maps, computer software and other works created in the course of employment mainly with the material and technical resource of the legal entity or other organization and under its responsibility;

(2) works created in the course of employment where the copyright is, in accordance with laws, administrative regulations or contracts, enjoyed by the legal entity or other organization.

Article 17. The ownership of the copyright in a commissioned work shall be agreed upon in a contract between the commissioning and the commissioned parties. In the absence of a contract or of an explicit agreement in the contract, the copyright in such a work shall belong to the commissioned party.

Article 18. The transfer of ownership of the original copy of a work of fine art, or other works, shall not be deemed to include the transfer of the copyright in such work, provided that the right to exhibit the original copy of a work of fine art shall be enjoyed by the owner of such original copy.

Article 19. Where the copyright in a work belongs to a citizen, the right of exploitation and the rights under Article 10, paragraphs (5) to (17), of this Law in respect of the work shall, after his death, during the term of protection provided for in this Law, be transferred in accordance with the provisions of the Inheritance Law.

Where the copyright in a work belongs to a legal entity or other organization, the rights under Articles 10, paragraphs (5) to (17), of this Law, shall, after the change or the termination of the status of the legal entity or other organization, during the term of protection provided for in this Law, be enjoyed by the succeeding legal entity or other organization which has taken over the former's rights and obligations, or, in the absence of such successor entity or other organization, by the State.

Section 3 Term of Protection for rights

Article 20. The rights of authorship, alteration and integrity of an author shall be unlimited in time.

Article 21. The term of protection for the right of publication and the rights referred to in Article 10, paragraphs (5) to (17), of this Law in respect of a work of a citizen shall be the lifetime of the author and fifty years after his death, and expires on 31 December of the fiftieth year after the death of the author. In the case of a work of joint authorship, such term shall expire on 31 December of the fiftieth year after the death of the last surviving author.

The term of protection for the right of publication and the rights provided for in Article 10, paragraphs (5) to (17), of this Law in respect of a work where the copyright belongs to a legal entity or other organization or in respect of a work created in the course of employment where the legal entity or other organization enjoys the copyright (except the right of authorship), shall be fifty years, and expires on 31 December of the fiftieth year after the first Publication of such work, provided that any such work that has not been published within fifty years after the completion of its creation shall no longer be protected under this Law.

The term of protection for the right of publication or protection for the right of publication or

the rights referred to in Article 10, paragraphs (5) to (17), of this Law in respect of a cinematographic work, a work created by virtue of an analogous method of film production or a photographic work shall be fifty years, and expires on 31 December of the fiftieth year after the first publication of such work, provided that any such work that has not been published within fifty years after the completion of its creation shall no longer be protected under this Law.

Section 4 Limitations on Rights

Article 22. In the following cases, a work may be exploited without permission from, and without payment of remuneration to, the copyright owner, provided that the name of the author and the title of the work shall be mentioned and the other rights enjoyed by the copyright owner by virtue of this Law shall not be prejudiced:

- (1) use of a published work for the purposes of the user's own private study, research or self-entertainment;
- (2) appropriate quotation from a published work in one's own work for the purposes of introduction to, or comments on, a work, or demonstration of a point;
- (3) reuse or citation, for any unavoidable reason, of a published work in newspapers, periodicals, at radio stations, television stations or any other media for the purpose of reporting current events;
- (4) reprinting by newspapers or periodicals, or rebroadcasting by radio stations, television stations, or any other media, of articles on current issues relating to politics, economics or religion published by other newspapers, periodicals, or broadcast by other radio stations, television stations or any other media except where the author has declared that the reprinting and rebroadcasting is not permitted;
- (5) publication in newspapers or periodicals, or broadcasting by radio stations, television stations or any other media, of a speech delivered at a public gathering, except where the author has declared that the publication or broadcasting is not permitted;
- (6) translation, or reproduction in a small quantity of copies, of a published work for use by teachers or scientific researchers, in classroom teaching or scientific research, provided that the translation or reproduction shall not be published or distributed;
- (7) use of a published work, within proper scope, by a State organ for the purpose of fulfilling its official duties;
- (8) reproduction of a work in its collections by a library, archive, memorial hall, museum, art gallery or any similar institution, for the purposes of the display, or preservation of a copy, of the work;
- (9) free-of-charge live performance of a published work and said performance neither collects any fees from the members of the public nor pays remuneration to the performers;
- (10) copying, drawing, photographing or video recording of an artistic work located or on display in an outdoor public place;
- (11) translation of a published work of a Chinese citizen, legal entity or any other organization from the Han language into any minority nationality language for publication and distribution within the country; and
- (12) transliteration of a published work into Braille and publication of the work so transliterated.

The above limitations on rights shall be applicable also to the rights of publishers, performers, producers of sound recordings and video recordings, radio stations and television stations.

Article 23. In compiling and publishing textbooks for implementing the nine-year compulsory education and the national educational program, parts of published works, short written works, music works or single copies of works of painting or photographic works may be compiled into textbooks without the authorization from the authors, except where the authors have declared in advance the use thereof is not permitted, with remuneration paid according to the regulations, the name of the author and the title of the work indicated and without prejudice to other rights enjoyed by the copyright owners according to this Law.

The above limitations on rights shall be applicable also to the rights of publishers, performers, producers of sound recordings and video recordings, radio stations and television stations.

Regulations on Computer Software Protection

(Promulgated by Decree No. 339 of the State Council of the People's Republic of China, and effective as of January 1, 2002)

Chapter I General Provisions

Article 1. These Regulations are formulated in accordance with the Copyright Law of the People's Republic of China, for the purposes of protecting the rights and interests of copyright owners of computer software, regulating the relationship of interests generated in the development, dissemination and use of computer software, encouraging the development and application of computer software, and promoting the development of software industry and the informatization of national economy.

Article 2. For the purposes of these Regulations, the term "computer software" (hereinafter referred to as "software") means computer programs and relevant documents.

Article 3. For the purposes of these Regulations, the following definitions apply:

(1) "computer program" means a coded instruction sequence which may be executed by devices with information processing capabilities such as computers, or a symbolic instruction sequence or symbolic statement sequence which may be automatically converted into a coded instruction sequence for the purpose of obtaining certain expected results; the source program and object program of a computer program shall be deemed as one and the same work;

(2) "documents" means literal descriptions or charts used to describe the content, structure, design, functional performance, historical development, test results and usage, such as program design instructions, flowcharts, and user's manuals;

(3) "software developer" means a legal entity or other organization that actually organizes, or directly carries out, the developments of a piece of software and assumes responsibility for the accomplished software, or a natural person who independently completes, relying on his own conditions, the development of a piece of software and assumes responsibility therefor;

(4) "software copyright owner" means a natural person, legal entity or other organization that enjoys software copyright in accordance with these Regulations.

Article 4. The software protected under these Regulations must be developed independently by the developer and fixed on tangible medium.

Article 5. Chinese citizens, legal entities or other organizations enjoy, in accordance with these Regulations, copyright in the software which they have developed, whether published or not.

Foreigners or stateless persons having software first published within the territory of the People's Republic of China enjoy copyright in accordance with these Regulations. Software copyright enjoyed by foreigners or stateless persons under an agreement concluded between China and the country to which they belong to or in which they have their habitual residences, or, under an international treaty acceded to by China, is protected in accordance with these Regulations.

Article 6. The protection of software copyright under these Regulations shall not extend to the ideas, processing, operating methods, mathematical concepts or the like used in software development.

Article 7. A software copyright owner may register with the software registration institution recognized by the copyright administration department of the State Council. A registration certificate issued by the software registration institution is a preliminary proof of the registered items.

Fees shall be paid for software registration. The charging standards for software registration shall be provided for by the copyright administration department of the State Council jointly with the competent department for pricing of the State Council.

Chapter II Software Copyright

Article 8. A software copyright owner shall enjoy the following rights:

(1) the right of divulgation, that is, the right to decide whether to make the software available to the public;

(2) the right of developer-ship, that is, the right to claim developer's identity and to have the developer's name mentioned in connection with the software;

(3) the right of alteration, that is, the right to supplement or abridge the software, or to change the sequence of instructions or statements;

(4) the right of reproduction, that is, the right to produce one or more copies of the software;

(5) the right of distribution, that is, the right to provide the original copy or reproductions of the software to the public by selling or donating;

(6) the right of rental, that is, the right to authorize others to use temporarily and onerously the original copy or reproductions of the software, except where the software itself is not the essential object of the rental;

(7) the right of communication through information network, that is, the right to make the software available to the public by wire or wireless means so that members of the public may have access to the software from a place and at a time individually chosen by them;

(8) the right of translation, that is, the right to converse the natural language of the software into another natural language; and

(9) other rights which shall be enjoyed by software copyright owners.

A software copyright owner may authorize others to exploit his copyright, and has a right to receive remuneration.

A software copyright owner may transfer, wholly or in part, his copyright, and has a right to receive remuneration.

Chapter IV Legal Liability

Article 23. Except where otherwise provided in the Copyright Law of the People's Republic of China or these Regulations, anyone who commits any of the following acts of infringement shall, in light of the circumstances, bear civil liability by means of ceasing infringements, eliminating ill effects, making an apology, or compensating for losses:

(1) to publish or register a piece of software without the authorization of the software copyright owner;

- (2) to publish or register a piece of software developed by another person as ones own;
- (3) to publish, or register, a piece of joint software as developed solely by oneself, without the authorization of the other co-developer(s);
- (4) to have one's name mentioned in connection with, or alter the name on, a piece of software developed by another person;
- (5) to alter or translate a piece of software without the authorization of the software copyright owner; or
- (6) to commit other acts of infringing upon software copyright.

Article 24. Except where otherwise provided in the Copyright Law of the People's Republic of China, these Regulations, or other laws or administrative regulations, anyone who, without the authorization of the software copyright owner, commits any of the following acts of infringement shall, in light of the circumstances, bear civil liability by means of ceasing infringements, eliminating ill effects, making an apology, or compensating for losses; where such act also prejudices the public interest, the copyright administration department may order to cease infringements, confiscate illegal income, confiscate or destroy the infringing copies, and may impose a fine concurrently; where the circumstances are serious, the copyright administration department may confiscate the material, tools and equipment mainly used to produce infringing copies; and where the act violates the Criminal Law, criminal liability shall be investigated for the crime of infringing upon copyright or selling infringing copies in accordance with the provisions of the Criminal Law:

- (1) to reproduce, wholly or in part, a piece of software of the copyright owner;
- (2) to distribute, rent or communicate to the public through information network a piece of software of the copyright owner;
- (3) to knowingly circumvent or sabotage technological measures used by the copyright owner for protecting the software copyright;
- (4) to knowingly remove or alter any electronic rights management information attached to a copy of a piece of software; or
- (5) to transfer, or authorize another person to exploit, the software copyright of the owner.

Whoever commits the act referred to in item (1) or (2) of the preceding paragraph may be concurrently fined 100 Yuan for per copy or not more than 5 times of the value of the products; and, those who commits the act referred to in item (3), (4) or (5) of the preceding paragraph may be fined not more than 50, 000 Yuan concurrently.

Child pornography

The Criminal Law of China promulgated on 14th March and enacted on 1st of October, 1997, ruled:

*** Production, sale and spreading of pornography**

Those who commit such crimes for profit, are punishable by 3 years' imprisonment, forced labour or surveillance with fine. 'Serious' offenders are subject to three to 10 years' imprisonment with fine. 'Gravest' offenders are subject to 10 years to life imprisonment with fine or confiscation of property.

*** Propagation of pornography**

Those spreading pornographic literature, film, video or images are punishable by 2 years' imprisonment, detention or surveillance. Those who spread pornography to minors aged under eighteen (18) are punishable by a heavier penalty.

Regulation on Internet Information Service of the People's Republic of China

Article 14 Internet information service providers, which provide news and publishing services as well as services such as electronic bulletin, shall record and provide the content of the information published, the time of publishing, the internet address or domain name of publishing; the internet access service providers shall record the information of the users such as their online time, their user names, internet address or domain names, calling telephone number and other information. Both Internet information service providers and internet access service providers shall keep the records for 60 days, and provide the records to relevant State authority when it is inquired.

Working Rules on Interim Regulation of International Networking of Computer Information Network

Article 19 The units which provide access service to international network as well as the units which connect and access to international network shall keep all the relevant information and documents related to the service they provide; shall in time provide relevant information and documents during inspections by the Information Work Leading Office of the State Council and other competent authorities. The units which provide access service to international network and connect to international network shall submit the reports about the network operation, business development as well as the administration work of last year to the Information Work Leading Office of the State Council in February every year.

Regulations on Internet Surfer Service Sites

Article 10 The operator of internet surfer service sites shall fulfill his duties:

...

(3) record the internet surfer information, keep the record for 60days and provide this information when inquired by relevant authority in accordance with the laws...

Provisions for the Administration of Internet Electronic Bulletin

Article 14 The electronic bulletin service provider shall record the information content published in the electronic bulletin service system as well as the time of publishing, the internet address or domain names of publishing. The record shall be kept for 60 days and provide to relevant State authority when inquired in accordance with the laws.

Article 15 The internet access service provider shall record the information of the users, such as the online time, user names, internet address or domain names, calling telephone number and other information. The record shall be kept for 60 days and provided to relevant State authority when inquired in accordance with the laws.

Criminal Procedure Law of the People's Republic of China

(Adopted at the Second Session of the Fifth National People's Congress on July 1, 1979, and revised in accordance with the Decision on Revising the Criminal Procedure Law of the People's

Republic of China adopted at the fourth Session of the Eighth National People's Congress on March 17, 1996)

Part two Filing a Case, Investigation, and Initiation of Public Prosecution

Chapter II Investigation

Section 6 Seizure of Material Evidence and Documentary Evidence

Article 116 If the investigators deem it necessary to seize the mail or telegrams of a criminal suspect, they may, upon approval of a public security organ or a People's Procuratorate, notify the post and telecommunications offices to check and hand over the relevant mail and telegrams for seizure.

When it becomes unnecessary to continue a seizure, the post and telecommunications offices shall be immediately notified.

People's Procuratorate Rules of Criminal Procedure

Chapter VII Reconnaissance

Section 5 Investigation, Seizure of Material Evidence, Documentary Evidence and audio-visual materials

Article 188 The documentary evidence and audio-visual materials obtained shall be original. If it is really difficult to obtain the original one or for confidentiality requirement, the copy or copies of the original one can be obtained instead.

The material evidence obtained shall be original. If the original one is not suitable for moving or maintaining, or in accordance with the laws it shall be returned to the victim, or for confidentiality requirement it cannot be obtained, the photo or video of the original one can be taken. The photo or video taken shall be sufficient to reflect the original shape and content.

Obtaining the copy or copies of the documentary evidence and audio-visual materials or obtaining the photo or video of the material evidence shall attach the notes to explain the reason why the original one cannot be obtained, the process of making this copy or photo or video and the place where the original one is stored. Together with the notes, there shall be the signature or seal of the holder of the original evidence and the staff who makes the copy or photo or video.

Article 192 If the investigators deem it necessary to seize the mail or telegrams or email of a criminal suspect, they may, upon approval of a Chief Prosecutor, notify the post and telecommunications offices or the internet service unit to check and hand over the relevant mail, telegrams or email for seizure. When it becomes unnecessary to continue a seizure, the post and telecommunications offices or the internet service unit shall be immediately notified.

Procedural Rules for Criminal Cases by Public Security Organs

Chapter V Evidence

Article 57 The documentary evidence collected and obtained shall be the original one. If it is really difficult to obtain the original one or for confidentiality requirement, the copy or copies of the original one can be obtained instead.

The material evidence collected and obtained shall be the original one. If the original one is not suitable for moving or maintaining, or in accordance with the laws it shall be returned to the victim, the photo or video that can sufficiently reflect the original shape or content can be taken.

Article 58 The copy or copies of the documentary evidence and audio-visual evidence, or the photo or video of the material evidence shall attach the notes to explain the process of making this copy or photo or video and the place where the original one is stored. Together with the notes, there shall be the signature or seal of the holder of the original evidence and the staff who makes the copy or photo or video.

State Security Law of the People's Republic of China

(Adopted at the 30th Meeting of the Standing Committee of the Seventh National People's Congress on February 22, 1993 and promulgated by Order No. 68 of the President of the People's Republic of China on February 22, 1993)

Chapter II Functions and Powers of the State Security Organs in the Work of State Security

Article 10 Where the reconnaissance of an act endangering State security requires, a State security organ may, in accordance with the relevant provisions of the State and after going through strict approval procedures, employ technological means of reconnaissance.

People's Police Law of the People's Republic of China

(Adopted at the 12th Meeting of the Standing Committee of the Eighth National People's Congress on February 28, 1995, promulgated by order No. 40 of the President of the People's Republic of China on February 28, 1995)

Chapter I Functions and Powers

Article 16 As necessitated by investigation of a crime, public security organs may, in accordance with relevant regulations of the State, take technical reconnaissance measures after strictly following approval formalities.

Extradition Law of the People's Republic of China

(Adopted at the 19th Meeting of the Standing Committee of the Ninth National People's Congress on December 28, 2000)

Chapter I General Provisions

Article 3 The People's Republic of China cooperates with foreign states in extradition on the basis of equality and reciprocity. No cooperation in extradition may impair the sovereignty, security or public interests of the People's Republic of China.

Article 4 The People's Republic of China and foreign states shall communicate with each other through diplomatic channels for extradition. The Ministry of Foreign Affairs of the People's Republic of China is designated as the communicating authority for extradition. Where in an extradition treaty there are special provisions to govern the communication authority, the provisions there shall prevail.

Article 5 In handling cases of extradition, compulsory measures including detention, arrest and residential surveillance may, depending on the circumstances, be taken against the person sought.

Chapter II Request Made to the People's Republic of China for Extradition

Section 1 Conditions for Extradition

Article 7 Request for extradition made by a foreign state to the People's Republic of China may be granted only when it meets the following conditions:

- (1) the conduct indicated in the request for extradition constitutes an offence according to the laws of both the People's Republic of China and the Requesting State; and
- (2) where the request for extradition is made for the purpose of instituting criminal proceedings, the offence indicated in the request for extradition is, under the laws of both the People's Republic of China and the Requesting State, punishable by a fixed term of imprisonment for one year or more or by any other heavier criminal penalty; where the request for extradition is made for the purpose of executing a criminal penalty, the period of sentence that remains to be served by the person sought is at least six months at the time when the request is made.

If the request for extradition concerns miscellaneous offences which conform to the provisions of subparagraph (1) of the preceding paragraph, as long as one of the offences conforms to the provisions of subparagraph (2) of the preceding paragraph, extradition may be granted for all of those offences.

Article 8 The request for extradition made by a foreign state to the People's Republic of China shall be rejected if:

- (1) the person sought is a national of the People's Republic of China under the laws of the People's Republic of China;
- (2) at the time request is received, the judicial organ of the People's Republic of China has rendered an effective judgement or terminated the criminal proceedings in respect of the offence indicated in the request for extradition;
- (3) the request for extradition is made for a political offence, or the People's Republic of China has granted asylum to the person sought;
- (4) the person sought is one against whom penal proceedings instituted or punishment may be executed for reasons of that person's race, religion, nationality, sex, political opinion or personal status, or that person may, for any of those reasons, be subjected to unfair treatment in judicial proceedings;
- (5) the offence indicated in the request for extradition is a purely military offence under the laws of the People's Republic of China or the laws of the Requesting State;
- (6) the person sought is, under the laws of the People's Republic of China or the laws of the Requesting State, immune from criminal responsibility because, at the time the request is received, the limitation period for prosecution the offence expires or the person is pardoned, or for other reasons;
- (7) the person sought has been or will probably be subjected to torture or other cruel, inhuman or humiliation treatment or punishment in the Requesting State;
- (8) the request for extradition is made by the Requesting State on the basis of a judgement rendered by default, unless the Requesting State undertakes that the person sought has the opportunity to have the case retried under conditions of his presence.

Article 9 The request for extradition made by a foreign state to the People's Republic of China may be rejected if:

- (1) the People's Republic of China has criminal jurisdiction over the offence indicated in the request and criminal proceedings are being instituted against the person or preparations are being made for such proceedings; or
- (2) extradition is incompatible with humanitarian considerations in view of the age, health or other conditions of the person sought.

Hong Kong

Basic Law of Hong Kong.

Chapter 106, Section 27A of Basic Law of Hong Kong

Telecommunication Ordinance

Section 27A: Unauthorized access to computer by telecommunication:

(1) Any person who, by telecommunication, knowingly causes a computer to perform any function to obtain unauthorized access to any program or data held in a computer commits an offence and is liable on conviction to a fine of \$ 20000.

(2) For the purposes of subsection (1)-

(a) the intent of the person need not be directed at-

(i) any particular program or data;

(ii) a program or data of a particular kind; or

(iii) a program or data held in a particular computer;

(b) access of any kind by a person to any program or data held in a computer is unauthorized if he is not entitled to control access of the kind in question to the program or data held in the computer and-

(i) he has not been authorized to obtain access of the kind in question to the program or data held in the computer by any person who is entitled;

(ii) he does not believe that he has been so authorized; and

(iii) he does not believe that he would have been so authorized if he had applied for the appropriate authority.

(3) Subsection (1) has effect without prejudice to any law relating to powers of inspection, search or seizure.

(4) Notwithstanding section 26 of the Magistrates Ordinance (Cap 227), proceedings for an offence under this section may be brought at any time within 3 years of the commission of the offence or within 6 months of the discovery of the offence by the prosecutor, whichever period expires first.

Chapter 200- Crimes ordinance

CRIMES ORDINANCE - SECT 59

Interpretation

PART VIII

CRIMINAL DAMAGE TO PROPERTY

(1) In this Part, "property" means-

(a) property of a tangible nature, whether real or personal, including money and-

(i) including wild creatures which have been tamed or are ordinarily kept in captivity, and any other wild creatures or their carcasses if, but only if, they have been reduced into possession which has not been lost or abandoned or are in the course of being reduced into possession; but

(ii) not including mushrooms growing wild on any land or flowers, fruit or foliage of a plant growing wild on any land; or

(b) any program, or data, held in a computer or in a computer storage medium, whether or not the program or data is property of a tangible nature. In this subsection, "mushroom" includes any fungus and "plant" includes any shrub or tree. (Replaced 23 of 1993 s. 3)

(1A) In this Part, "to destroy or damage any property" in relation to a computer includes the misuse of a computer.

In this subsection, "misuse of a computer" means-

(a) to cause a computer to function other than as it has been established to function by or on behalf of its owner, notwithstanding that the misuse may not impair the operation of the computer or a program held in the computer or the reliability of data held in the computer;

(b) to alter or erase any program or data held in a computer or in a computer storage medium;

(c) to add any program or data to the contents of a computer or of a computer storage medium, and any act which contributes towards causing the misuse of a kind referred to in paragraph (a), (b) or (c) shall be regarded as causing it. (Added 23 of 1993 s. 3)

(2) Property shall be treated for the purposes of this Part as belonging to any person-

(a) having the custody or control of it;

(b) having in it any proprietary right or interest (not being an equitable interest arising only from an agreement to transfer or grant an interest); or

(c) having a charge on it.

(3) Where property is subject to a trust, the persons to whom it belongs shall be so treated as including any person having a right to enforce the trust.

(4) Property of a corporation sole shall be so treated as belonging to the corporation notwithstanding a vacancy in the corporation. (Added 48 of 1972 s. 3) [cf. 1971 c. 48 s. 10 U.K.]

"property"

"mushroom"

"plant"

"to destroy or damage any property"

"misuse of a computer"

CRIMES ORDINANCE - SECT 60

Destroying or damaging property

(1) A person who without lawful excuse destroys or damages any property belonging to another intending to destroy or damage any such property or being reckless as to whether any such property would be destroyed or damaged shall be guilty of an offence.

(2) A person who without lawful excuse destroys or damages any property, whether belonging to himself or another-

(a) intending to destroy or damage any property or being reckless as to whether any property would be destroyed or damaged; and

(b) intending by the destruction or damage to endanger the life of another or being reckless as to whether the life of another would be thereby endangered, shall be guilty of an offence.

(3) An offence committed under this section by destroying or damaging property by fire shall be charged as arson. (Added 48 of 1972 s. 3) [cf. 1971 c. 48 s. 1 U.K.]

CRIMES ORDINANCE - SECT 159G

Attempting to commit an offence

Attempt

(1) A person who, intending to commit an offence to which this section applies, does an act that is more than merely preparatory to the commission of the offence is guilty of attempting to commit the offence.

(2) A person may be guilty of attempting to commit an offence to which this section applies even though the facts are such that the commission of the offence is impossible.

(3) Where a person is charged with an offence, he may be convicted of having attempted to commit that offence even though he was not charged with the attempt.

(4) In any case where-

(a) apart from this subsection a person's intention would not be regarded as having amounted to an intent to commit an offence; but

(b) if the facts of the case had been as he believed them to be, his intention would be so regarded, then, for the purposes of subsection

(1), he shall be regarded as having had an intent to commit that offence.

(5) This section applies to any offence which, if it were completed, would be triable in Hong Kong other than aiding, abetting, counselling or procuring the commission of an offence. (Added 49 of 1996 s. 2)

CRIMES ORDINANCE - SECT 161

Access to computer with criminal or dishonest intent

(1) Any person who obtains access to a computer-

(a) with intent to commit an offence;

(b) with a dishonest intent to deceive;

(c) with a view to dishonest gain for himself or another; or

(d) with a dishonest intent to cause loss to another, whether on the same occasion as he obtains such access or on any future occasion, commits an offence and is liable on conviction upon indictment to imprisonment for 5 years.

(2) For the purposes of subsection (1) "gain" and "loss" are to be construed as extending not only to gain or loss in money or other property, but as extending to any such gain or loss whether temporary or permanent; and-

(a) "gain" includes a gain by keeping what one has, as well as a gain by getting what one has not; and

(b) "loss" includes a loss by not getting what one might get, as well as a loss by parting with what one has. (Added 23 of 1993 s. 5)

"gain" and "loss"

Chapter 210- Theft Ordinance

THEFT ORDINANCE - SECT 11

Burglary

(1) A person commits burglary if-

(a) he enters any building or part of a building as a trespasser and with intent to commit any such offence as is mentioned in subsection

(2); or

(b) having entered any building or part of a building as a trespasser he steals or attempts to steal anything in the building or that part of it or inflicts or attempts to inflict on any person therein any grievous bodily harm.

(2) The offences referred to in subsection (1)(a) are-

(a) stealing anything in the building or part of a building in question;

(b) inflicting on any person therein any grievous bodily harm or raping any woman therein; and

(c) doing unlawful damage to the building or anything therein.

(3) References in subsections (1) and (2) to a building shall apply also to an inhabited vehicle or vessel, and shall apply to any such vehicle or vessel at times when the person having a habitation in it is not there as well as at times when he is.

(3A) The reference in subsection (2)(c) to doing unlawful damage to anything in a building includes-

(a) unlawfully causing a computer in the building to function other than as it has been established by or on behalf of its owner to function, notwithstanding that the unlawful action may not impair the operation of the computer or a program held in the computer or the reliability of data held in the computer;

(b) unlawfully altering or erasing any program, or data, held in a computer in the building or in a computer storage medium in the building; and

(c) unlawfully adding any program or data to the contents of a computer in the building or a computer storage medium in the building. (Added 23 of 1993 s. 6)

(4) Any person who commits burglary shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 14 years. [cf. 1968 c. 60 s. 9 U.K.]

THEFT ORDINANCE - SECT 19

False accounting

(1) Where a person dishonestly, with a view to gain for himself or another or with intent to cause loss to another-

(a) destroys, defaces, conceals or falsifies any account or any record or document made or required for any accounting purpose; or

(b) in furnishing information for any purpose produces or makes use of any account, or any such record or document as aforesaid, which to his knowledge is or may be misleading, false or deceptive in a material particular, he shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 10 years. (Amended 46 of 1986 s. 4)

(2) For the purposes of this section a person who makes or concurs in making in an account, record or document an entry which is or may be misleading, false or deceptive in a material particular, or who omits or concurs in omitting a material particular from an account, record or

document, is to be treated as falsifying the account, record or document. (Amended 23 of 1993 s. 7)

(3) For the purposes of this section, "record" includes a record kept by means of a computer. (Added 23 of 1993 s. 7) [cf. 1968 c. 60 s. 17 U.K.]

"record"

Chapter 390- Child pornography

Prohibition on publishing obscene articles', Article 21 of the Penal Code, 'Control of Obscene and Indecent Articles', CAP. 390

'(1) Subject to subsection (2) any person who -

a) publishes;

b) possesses for the purpose of publication; or

c) imports for the purpose of publication, any obscene article, whether or not he knows that it is an obscene article, any obscene article, commits an offence and is liable to a fine of \$ 1.000.000 and to imprisonment for three (3) years.

(2) (...)'

'Prohibiting on publishing an indecent article to a juvenile', Article 22 of the Penal Code, 'Control of Obscene and Indecent Articles', CAP. 390

'(1) Subject to subsection (2), any person who publishes any indecent article on a person who is a juvenile, whether or not he knows that it is an indecent article or that such person is a juvenile, commits an offence and is liable to a fine of \$ 400.000 and to imprisonment for twelve (12) months on his first conviction, and to a fine of \$ 400.000 and to imprisonment for twelve (12) months on a second or subsequent conviction.

(2) (...)'

'Prohibition on display of indecent matter', Article 23 of the Penal Code, 'Control of Obscene and Indecent Articles', CAP. 390

'(1) If any indecent matter is publicly displayed, the person making display and any person causing or permitting the display to be made, whether or not he knows that the matter is indecent, commits an offence and is liable to a fine of \$ 400.000 and to imprisonment for twelve (12) months on his first conviction, and to a fine of \$ 800.000 and to imprisonment for twelve (12) months on a second or subsequent conviction.

(2) Nothing in this section shall apply in relation to any matter-

a) included in a television programme service provided by a company licensed under Broadcasting Ordinance (CAP. 562); or

b) included in the display of an article in a bona fide art gallery or museum and visible only from within that gallery or museum.'

'Prohibition on possession of an indecent article for the purposes of publication', Article 27A of the Penal Code, 'Control of Obscene and Indecent Articles', CAP. 390

'(1) (...) any person who possesses for the purpose of publication any indecent article (...) whether or not he knows that it is an indecent article, (...), commits an offence and is liable to a fine of \$ 400.000 and to imprisonment for twelve (12) months on his first conviction, and to a fine of \$ 800.000 and to imprisonment for twelve (12) months on a second or subsequent conviction.(...)'

Internet

Hong Kong does not have specific legislation targeted solely at 'Crimes Against Children Using the Internet'. Any publication of child pornography on the Internet would be governed under the 'Control of Obscene and Indescent Articles Ordinance', Cap. 390.

The Government of Hong Kong has proposed 'The Prevention of Child Pornography Bill' and 'Crimes (Amendment) Bill' to the Legislative Council (similar to a parliament) for consideration. The former

targets to prohibit simple possession, making, distribution of child pornography amongst other provisions. The latter Bill targets to provide extra-territorial effect to certain sexual offences committed against children.

Chapter 525- Mutual legal assistance in criminal matters ordinance¹.

Section 2- Interpretation.

(1) In this Ordinance, unless the context otherwise requires- "ancillary criminal matter" (附帶刑事事宜) means a matter relating to-

(a) the restraining of dealing with, or the seizure, forfeiture or confiscation of, property in connection with a Hong Kong offence or an external offence; or

(b) the obtaining, enforcement or satisfaction of a Hong Kong confiscation order or an external confiscation order; "appropriate authority" (有關當局), in relation to a place outside Hong Kong, means a person whom the Secretary for Justice is satisfied is a person who for the time being may under the law of that place- (Amended L.N. 362 of 1997)

(a) in the case of a request by Hong Kong to that place for assistance in a criminal matter, receive such a request; or

(b) in the case of a request by that place to Hong Kong for assistance in a criminal matter, make such a request; "arrangements for mutual legal assistance" (相互法律協助的安排) means arrangements-

(a) which are applicable to-

(i) the Government and the government of a place outside Hong Kong (other than the Central People's Government or the government of any other part of the People's Republic of China); or
(ii) Hong Kong and a place outside Hong Kong (other than any other part of the People's Republic of China); and (Amended 71 of 1999 s. 3)

(b) for the purposes of the provision and obtaining of assistance in criminal matters between Hong Kong and that place;

"assistance" (協助) includes giving evidence;

"authorized officer" (獲授權人員) means-

(a) any police officer;

(b) any member of the Customs and Excise Service established by section 3 of the Customs and Excise Service Ordinance (Cap 342);

(c) any officer within the meaning of section 2 of the Independent Commission Against Corruption Ordinance (Cap 204); and

(d) any other person (including a person belonging to a class of persons) authorized in writing by the Secretary for Justice for the purposes of this Ordinance; (Amended L.N. 362 of 1997)

"court" (法院) includes a tribunal and magistrate;

"criminal matter" (刑事事宜) means-

(a) an investigation;

(b) a prosecution; or

(c) an ancillary criminal matter;

"dealing" (處理), in relation to property, includes-

(a) receiving or acquiring the property;

(b) concealing or disguising the property (whether by concealing or disguising its nature,

¹ For more details see also other articles of Chapter 525, http://www.legislation.gov.hk/blis_ind.nsf/d2769881999f47b3482564840019d2f9?OpenView&Start=523&Count=30&Expand=525#525

source, location, disposition, movement or ownership or any rights with respect to it or otherwise);

(c) disposing of or converting the property;

(d) bringing into or removing from Hong Kong the property;

(e) using the property to borrow money, or as security (whether by way of charge, mortgage or pledge or otherwise);

"duly certified" (妥為核證) means (except in sections 29 and 30) duly certified as provided in section 32;

"external confiscation order" (外地沒收令) means an order, made under the law of a place outside Hong Kong, for the purpose of-

(a) recovering (including forfeiting and confiscating)-

(i) payments or other rewards received in connection with an external serious offence or their value;

(ii) property derived or realised, directly or indirectly, from payments or other rewards received in connection with an external serious offence or the value of such property; or
(iii) property used or intended to be used in connection with an external serious offence or the value of such property; or

(b) depriving a person of a pecuniary advantage obtained in connection with an external serious offence, and whether the proceedings which gave rise to that order are criminal or civil in nature, and whether those proceedings are in the form of proceedings against a person or property;

"external law immunity certificate" (外地法律豁免權證明書) means a certificate given, or a declaration made, by a place outside Hong Kong or under a law of a place outside Hong Kong certifying or declaring that, under the law of that place, persons generally or a specified person could or could not, either generally or in specified proceedings and either generally or in specified circumstances, be required-

(a) to answer a specified question; or

(b) to produce a specified document;

"external offence" (外地罪行) means an offence against a law of a place outside Hong Kong;

"external prisoner" (外地囚犯) means a person who is-

(a) being held in custody pending trial for or sentence for an external offence; or

(b) under a sentence of imprisonment for an external offence, but does not include a person who is at large having escaped from lawful custody;

"external serious offence" (外地嚴重罪行) means an external offence the maximum penalty for which is death, or imprisonment for not less than 24 months;

"Hong Kong confiscation order" (香港沒收令) means an order, made under a law of Hong Kong, for the purpose of-

(a) recovering (including forfeiting or confiscating)-

(i) payments or other rewards received in connection with a Hong Kong serious offence or their value;

(ii) property derived or realised, directly or indirectly, from payments or other rewards received in connection with a Hong Kong serious offence or the value of such property; or
(iii) property used or intended to be used in connection with a Hong Kong serious offence or the value of such property; or

(b) depriving a person of a pecuniary advantage obtained in connection with a Hong Kong serious offence, and whether the proceedings which gave rise to that order are criminal or civil in nature, and whether those proceedings are in the form of proceedings against a person or property;

"Hong Kong offence" (香港罪行) means an offence against a law of Hong Kong;

"Hong Kong prisoner" (香港囚犯) means a person who is-

(a) being held in custody pending trial for or sentence for a Hong Kong offence; or

(b) under a sentence of imprisonment for a Hong Kong offence, but does not include a person who is at large having escaped from lawful custody;

"Hong Kong serious offence" (香港嚴重罪行) means a Hong Kong offence the maximum penalty for which is death, or imprisonment for not less than 24 months;

"investigation" (偵查) means an investigation-

(a) into a Hong Kong offence or external offence; or

(b) for the purposes of an ancillary criminal matter;
"material" (物料) includes any books, document or other record in any form whatsoever, and any article or substance;

"Monetary Authority" (金融管理專員) means the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance (Cap 66);

"premises" (處所) includes-

- (a) a structure (whether or not movable or offshore), building, tent, vehicle, vessel, aircraft or hovercraft;
- (b) a place (whether or not enclosed or built upon); and

(c) a part of premises (including premises of a kind referred to in paragraph (a) or (b));

"prescribed arrangements" (訂明安排) means arrangements for mutual legal assistance which are the subject of an order under section 4(1) which is in force;

"prescribed place" (訂明地方) means a place outside Hong Kong to or from which assistance in criminal matters may be provided or obtained, as the case may be, pursuant to prescribed arrangements;

"prosecution" (檢控) means a trial of a person for a Hong Kong offence or external offence, and includes any proceedings to determine whether a person should be tried for such an offence;

"relevant auditor" (有關核數師) means a person appointed as an auditor for the purposes of any enactment;

"restrain" (限制), in relation to property, includes seizing the property;

"statement" (陳述) includes evidence;

"tax adviser" (稅務顧問) means a person appointed bona fide to give advice, in the course of his employment or of a business carried on by him, about the tax affairs of another person (whether appointed directly by that other person or another tax adviser of that other person);

"tax document" (稅務文件)-

- (a) in relation to a tax adviser, means a document which falls within Part 1 of Schedule 1;
- (b) in relation to a relevant auditor, means a document which falls within Part 2 of Schedule 1;

"thing" (物件) includes material.

(Amended 71 of 1999 s. 3)

(2) For the purposes of this Ordinance-

- (a) the law of a place outside Hong Kong includes the law of any part of that place;
- (b) conduct in-
 - (i) a colony or dependency; or

(ii) a vessel, aircraft or hovercraft, of a place outside Hong Kong shall be treated as if the conduct were conducted in the territory of that place.

(3) For the avoidance of doubt, it is hereby declared that any one set of arrangements for mutual legal assistance may be made with any number (including any combination) of-

- (a) governments of places outside Hong Kong;

(b) places outside Hong Kong, and the other provisions of this Ordinance (including the definition of "arrangements for mutual legal assistance") which relate, whether directly or indirectly, to arrangements for mutual legal assistance shall be construed accordingly.

(4) Where arrangements applicable to-

- (a) the Government and the government of a place outside Hong Kong; or
 - (b) Hong Kong and a place outside Hong Kong,
- are partly for the purposes specified in paragraph (b) of the definition of "arrangements for mutual legal assistance" and partly for other purposes, the arrangements are in this Ordinance arrangements for mutual legal assistance to the extent that they relate to those specified purposes.

(5) In the definitions of "Hong Kong confiscation order" and "external confiscation order" and in subsection (9), any reference to an order includes any order, decree, direction or judgment, or any part thereof, howsoever described.

(6) Where a person obtains a pecuniary advantage referred to in paragraph (b) of the definition of "Hong Kong confiscation order" or "external confiscation order", he is to be treated for the purposes of this Ordinance as if he had obtained in connection with the Hong Kong serious offence or external serious offence, as the case may be, to which the advantage relates a sum of money equal to the value of the advantage, and the other provisions of this Ordinance shall be construed accordingly.

(7) For the avoidance of doubt, it is hereby declared that this Ordinance shall not entitle a private person, or any person acting on behalf of a private person, to-

(a) obtain, suppress or exclude any evidence; or

(b) impede or otherwise prejudice any request under this Ordinance, in respect of a criminal matter in Hong Kong or a place outside Hong Kong.

(8) In this Ordinance, any reference (howsoever expressed) to any thing being required to be done, or being done, in relation to a criminal matter also includes a reference to such a thing being required to be done, or being done, in the criminal matter.

(9) In this Ordinance, any reference to an order being made in a proceeding includes a reference to an order arising out of the proceeding.

(10) Subject to subsection (11), nothing in this Ordinance shall require the disclosure of any items subject to legal privilege within the meaning of section 13. (Added 26 of 2002 s. 5)

(11) Subsection (10) shall not prejudice the operation of Part IV. (Added 26 of 2002 s. 5)

Section 3- Application.

Remarks:

Adaptation amendments retroactively made - see 71 of 1999 s. 3

(1) This Ordinance shall not apply to the provision or obtaining of assistance in criminal matters between Hong Kong and any other part of the People's Republic of China. (Amended 71 of 1999 s. 3)

(2) This Ordinance shall not operate to prevent or prejudice the generality of the provision or obtaining of assistance in criminal matters between Hong Kong and a place outside Hong Kong otherwise than-

(a) as provided for under this Ordinance; or

(b) pursuant to arrangements for mutual legal assistance.

(3) It is hereby declared that the provisions of this Ordinance shall not operate to prejudice the generality of section 4 of the Inland Revenue Ordinance (Cap 112).

Chapter 528- Copyright Ordinance²

Section 2- Copyright and copyright works.

PART II
COPYRIGHT
DIVISION I

SUBSISTENCE, OWNERSHIP AND DURATION OF COPYRIGHT

Introductory

(1) Copyright is a property right which subsists in accordance with this Part in the following descriptions of work-

² For more details see also other articles of the chapter 528, http://www.legislation.gov.hk/blis_ind.nsf/d2769881999f47b3482564840019d2f9?OpenView&Start=523&Count=30&Expand=528#528

- (a) original literary, dramatic, musical or artistic works;
- (b) sound recordings, films, broadcasts or cable programmes; and
- (c) the typographical arrangement of published editions.

(2) In this Part "copyright work" (版權作品) means a work of any of those descriptions in which copyright subsists.

(3) Copyright does not subsist in a work unless the requirements of this Part with respect to qualification for copyright protection are met (see section 177 and the provisions referred to there).

[cf. 1988 c. 48 s. 1 U.K.]

Section 35- Infringing copy

(1) In this Part "infringing copy" (侵犯版權複製品), in relation to a copyright work, is to be construed in accordance with this section.

(2) A copy of a work is an infringing copy if its making constituted an infringement of the copyright in the work in question.

(3) Except as provided in section 35A, a copy of a work other than a copy of an accessory work is also an infringing copy if-

- (a) it has been or is proposed to be imported into Hong Kong; and
- (b) its making in Hong Kong would have constituted an infringement of the copyright in the work in question, or a breach of an exclusive licence agreement relating to that work.

(4) For the purposes of sections 118 to 133 (criminal provisions) "infringing copy" (侵犯版權複製品) does not include a copy of a work- <* Note - Exp. X-Ref.: Sections 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133 *>

- (a) that was lawfully made in the country, territory or area where it was made;
- (b) that has been or is proposed to be imported into Hong Kong at any time after the expiration of 18 months beginning on the first day of publication of the work in Hong Kong or elsewhere; and
- (c) its making in Hong Kong would have constituted an infringement of the copyright in the work in question, or a breach of an exclusive licence agreement relating to that work,

or a copy of an accessory work-

- (i) that was lawfully made in the country, territory or area where it was made;
- (ii) that has been or is proposed to be imported into Hong Kong; and
- (iii) its making in Hong Kong would have constituted an infringement of the copyright in the work in question, or a breach of an exclusive licence agreement relating to that work.

(5) For the purposes of Division VII (proceedings relating to importation of infringing articles), "infringing copy" (侵犯版權複製品) does not include a copy of a work or a copy of an accessory work-

- (a) that was lawfully made in the country, territory or area where it was made;
- (b) that has been or is proposed to be imported into Hong Kong; and
- (c) its making in Hong Kong would have constituted an infringement of the copyright in the work in question, or a breach of an exclusive licence agreement relating to that work.

(6) Where in any proceedings the question arises whether a copy of a work is an infringing copy and it is shown-

(a) that it is a copy of the work; and

(b) that copyright subsists in the work or has subsisted at any time, it shall be presumed until the contrary is proved that the copy was made at a time when copyright subsisted in the work.

(7) In this Part "infringing copy" (侵犯版權複製品) includes a copy which is to be treated as an infringing copy by virtue of any of the following provisions-

section 41(5) (copies made for purposes of instruction or examination);
section 44(3) (recordings made by educational establishments for educational purposes);
section 45(3) (reprographic copying by educational establishments for purposes of instruction);
section 46(4)(b) (copies made by librarian or archivist in reliance on false declaration);
section 64(2) (further copies, adaptations, etc. of work in electronic form retained on transfer of principal copy);
section 72(2) (copies made for purpose of advertising artistic work for sale); or
section 77(4) (copies made for purpose of broadcast or cable programme).

(8) For the purpose of subsections (3), (4) and (5), "accessory work" (附屬作品) means a work incorporated in or consisting of-

(a) a label affixed to, or displayed on, an article;

(b) the packaging or container in which an article is packaged or contained;

(c) a label affixed to, or displayed on, the packaging or container in which an article is packaged or contained;

(d) a written instruction, warranty or other information incidental to an article and provided with the article on its sale; or

(e) an instructional sound recording or film incidental to an article and provided with the article on its sale,

and the economic value of the article (inclusive of the label, packaging, container, instruction, warranty, other information, sound recording or film, as the case may be) is not predominantly attributable to the economic value of the work.

(9) (Repealed 27 of 2003 s. 2)

Section 35A- Copy of a computer program, or of certain other works embodied in the same article as a computer program, not an "infringing copy" for the purposes of section 35(3).

(1) A copy of a work to which this subsection applies is not an infringing copy for the purposes of section 35(3) if it was lawfully made in the country, territory or area where it was made.

(2) Subsection (1) applies to-

(a) a copy of a computer program; or

(b) except as provided in subsection (3) or (4), a copy of a work other than a computer program, which copy is embodied in an article that also embodies a copy of a computer program, that, but for subsection (1), would be an infringing copy for the purposes of section 35(3).

(3) Subsection (1) does not apply to any copy of a work described in subsection (2)(b)-

(a) that is a copy of the whole or substantially the whole of a movie or a television drama; or

(b) that is a copy of a part of a movie or a television drama if-

(i) all those parts of the movie or television drama copies of which are embodied in the article together constitute the whole or substantially the whole of the movie or television drama; or

(ii) the viewing time of all those parts of the movie or television drama copies of which are embodied in the article is, in the case of a movie, more than 15 minutes in aggregate or, in the case of a television drama, more than 10 minutes in aggregate,

and in paragraphs (a) and (b)(i), reference to a television drama, in the case of a television drama comprising one or more episodes, is reference to an episode of the television drama.

(4) Subsection (1) does not apply to any copy of a work described in subsection (2)(b) that is-

- (a) a copy of a movie or a television drama (other than a copy to which subsection (3) applies);
- (b) a copy of a musical sound recording or a musical visual recording; or
- (c) a copy that forms part of an e-book,

(a "specified copy of a work") if the article in which the specified copy is embodied is likely, in being acquired by a person for his own use, to be acquired for the purpose of acquiring the specified copies of works that are embodied in it more so than for the purpose of acquiring the copies of works other than specified copies that are embodied in it.

(5) For the purposes of subsection (4), in considering the extent to which an article is likely to be acquired for the purpose of acquiring a particular copy of a work that is embodied in it, a copy of those parts of any computer program the function of which is to provide a means of-

- (a) viewing or listening to a specified copy of a work that is embodied in the article (or, where that work is in encrypted form, a means of decrypting it so as to enable such viewing or listening); or
- (b) searching for any specific part of a specified copy of a work that is embodied in the article,

shall be regarded as part of the specified copy of a work.

(6) In this section, "e-book" (電子書) means a combination of copies of works embodied in a single article and comprising-

- (a) one or more copies of each of-
- (i) a computer program; and

- (ii) a literary work (other than a computer program), a dramatic work, a musical work or an artistic work ("main work"),

so arranged as to provide for the copy of the main work to be presented in the form of an electronic version of a book, magazine or periodical; and

- (b) where a main work is accompanied for illustrative purposes by any copy or copies of films or sound recordings, that copy or those copies.

(7) For the avoidance of doubt, reference in this section, other than subsection (6), to a copy of a work is reference to a copy of the whole or a substantial part of a work.

(Added 27 of 2003 s. 3)

Section 35(3)- Infringing copy.

3) Except as provided in section 35A, a copy of a work other than a copy of an accessory work is also an infringing copy if- (Amended 27 of 2003 s. 2)

- (a) it has been or is proposed to be imported into Hong Kong; and

- (b) its making in Hong Kong would have constituted an infringement of the copyright in the work in question, or a breach of an exclusive licence agreement relating to that work.

Chapter 2101- article 140.

Article 140. The Government of the Hong Kong Special Administrative Region shall, on its own, formulate policies on culture and protect by law the achievements and the lawful rights and interests of authors in their literary and artistic creation.