

## **The Hong Kong Heritage Project Submission on Public Consultation “Proposed Subsidiary Legislation under the Copyright Ordinance”**

The Hong Kong Heritage Project (HKHP) is a non-profit organisation founded by Sir Michael Kadoorie in 2007 to preserve history and promote heritage awareness in Hong Kong. It operates a public-access archive housing records originating from the Kadoorie Family businesses to facilitate new scholarship about Hong Kong history, and organises cultural programmes aimed at engaging the community.

HKHP welcomes the expansion of permitted acts under sections 47 to 53. We would like to bring the government’s attention to our concern over the proposed definition of the term “conducted for profit” and “permanent collection”, coverage of sections 47-50 and orphan works.

### **1. Definition of the term “conducted for profit”**

Paragraph 3.4 of the “Remarks on ‘Libraries’, ‘Museums’ and ‘Archives’ which are ‘Conducted for Profit’” (pp. 24-25 of the Consultation Paper) extends the term “conducted for profit” to “institutions that are either administered by or form part of a profit-making entity given that such institutions form a part of the entity’s profit-making activities”, whilst the definition of paragraph 3.5(b) omits the proviso forming “a part of the entity’s profit-making activities”.

HKHP is not established or operated for profit for itself and its parent entity. Administratively put under CLP Holdings, it would however fall under the profit-making class with the proposed definition above, denying us the permitted acts in sections 47 – 53. Our archive services would be hampered - hundreds of researchers from Hong Kong and overseas would no longer be able to make use the research resources here. Not qualified as recipient institution, replacement copies from other institutions cannot be made available to us and our users.

HKHP believes a definition without 3.5(b) in the remarks can ensure the continued availability of our rich and unique historical resources to the academia and chronicling of Hong Kong history. Safeguards such as signed declaration committing non-commercial, not-for-profit use by users and recipient institutions when applying for copies are sufficient to ensure copyright owners’ interests.

## **2. Applicability of sections 47 and 48**

More often than not, archival collections are a mixed bag of archival materials and published works by others. At HKHP for example, amongst the archives are industry news bulletins and periodicals. An expansion of sections 47 and 48 to include archives would facilitate research and our day-to-day operation.

## **3. Orphan works**

In HKHP's holding there are orphan works whose copyright owners are companies dissolved. Whilst section 50 provides that supply of copies of works whose copyright owners cannot be reached after reasonable inquiry are permissible between libraries, no similar provision is made for the use and communication of these works by archivists. Adding prescribed conditions in relevant sections for using and communicating orphan works, or making express provision stipulating duration of their copyright would bring clarity to archivists in making available these material for research and study, and protect the archive from being exposed to legal risks.

## **4. Definition of “permanent collection”**

Giving “permanent collection” a definition is not most useful in ensuring proper invocation of permitted acts. For a collecting archive like ours, deposit agreement types are varied and diverse – an antiquated agreement type termed “permanent loan” would invite the question on the level of “permanence”, while some deposit terms permit depositor to withdraw the deposited collection for a limited period of time with adequate notice and forbid the archive to loan the collection to other institutions. These materials, however, are under the long-term custody of our archive. We reckon the proposed definition overly static and would not be able to provide the certainty that the amendment proposal intends.