

LEGISLATIVE COUNCIL BRIEF

Copyright Ordinance

(Chapter 528)

COPYRIGHT (SUSPENSION OF AMENDMENTS) BILL 2001

INTRODUCTION

At the meeting of the Executive Council on 26 April 2001, the Council ADVISED and the Chief Executive ORDERED that the Copyright (Suspension of Amendments) Bill 2001, at Annex A, should be introduced into the Legislative Council to suspend the implementation of the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 (the amending Ordinance) insofar as it applies to certain criminal provisions in the Copyright Ordinance and subject to certain exceptions.

BACKGROUND AND ARGUMENT

The Amendments to the Copyright Ordinance

2. The use of copyright infringing products in business, e.g. pirated computer software is a serious problem in Hong Kong. According to an unofficial estimate, about 50% of all computer software used in business is pirated.

3. In 1999, in response to wide community concern about rampant piracy of computer software, music and films, we consulted the public on additional legislative measures to combat the piracy problem. One of the proposed measures that gained wide public support was to strengthen the criminal provisions against copyright piracy in the course of business. A main objective of the amending Ordinance is to amend the Copyright Ordinance to implement this proposal.

4. Before being amended by the amending Ordinance, the Copyright Ordinance stipulated, *inter alia*, that an offence would be committed if a person possessed an infringing copy of a copyright work for the purpose of trade or business with a view to committing an infringing act. Based on legal advice, we had interpreted the phrase “for the purpose of trade or business” narrowly to mean that an enterprise would commit an offence only if it was engaged in dealing in the infringing copy concerned. For example, a firm that engaged in manufacturing optical disks containing pirated computer software would commit an offence and be prosecuted. In contrast, a firm engaged in garment manufacturing and which used pirated accounting software in its business would not, according to our interpretation of the law, be prosecuted.

5. The amending Ordinance has replaced the phrase “for the purpose of trade or business” with “for the purpose of, in the course of, or in connection with, any trade or business” where it has appeared in the Copyright Ordinance. As a result of this amendment, the garment manufacturing firm in paragraph 4 above will commit an offence and be prosecuted by knowingly possessing the pirated software in the course of business, even though it is not engaged in making the software concerned for sale.

6. The term “business” as used in the Copyright Ordinance¹ is not confined to commercial activities. It can also cover educational, charitable or government activities. An infringing copy of a copyright work is one the making of which infringes the copyright of that work. An infringing copy may therefore be a pirated computer program, an unauthorized photocopy of a newspaper article, an unauthorized recording of a television programme, or an electronic copy or hardcopy of a copyright work downloaded from the Internet without the authorisation of the copyright owner. In principle, all copyright works should be treated equally and should enjoy the same level of protection under the law.

Problems with Implementing the Amending Ordinance

7. For the purpose of disseminating information, enterprises have a practical need to make timely copies (e.g. photocopy, facsimile, scanning, recording) of newspaper or magazine articles, and to a lesser extent, of radio or television broadcasts or cable programmes, or to download works from the Internet. However, unless authorized by the copyright owner, the possession in the course of business of an infringing copy of the work thus

¹ Section 198 of the Copyright Ordinance defines the term ‘business’ to include a trade or profession. A British court has interpreted the term ‘business’ to include as least some government activities.

made may be liable to criminal prosecution. The threat of criminal proceedings and the absence of a convenient mechanism to obtain the required authorization have hampered the dissemination of information in enterprises. Some business associations have suggested that ad hoc photocopying of newspaper articles for internal reference purposes should not be made an offence.

8. Furthermore, the educational sector is concerned that teachers may incur criminal liability inadvertently as they routinely make multiple copies of copyright works contained in newspapers, magazines or books, as well as works downloaded from the Internet, for classroom use. They may also record radio or television broadcasts for teaching purposes. We have explained, through various means including briefings and guidelines, to the educational sector that the Copyright Ordinance already provides exemptions for educational copying under specified circumstances, and that the amending Ordinance has not changed any of these exemptions. We have also explained that in relation to books, all subsidised or government schools are specifically authorized under licensing agreements to make photocopies of any books within the terms of the agreement. However, the educational sector remains worried about the possibility of committing an offence when conducting normal school activities. Teachers are particularly concerned that the statutory exemptions for educational copying are subject to the condition that copying must be done within a “reasonable extent”, which is not clearly defined in the Copyright Ordinance.

9. Recognising the impact of the amending Ordinance on the photocopying of newspaper articles, we have since last year been encouraging and assisting the local newspaper industry to establish a collective licensing mechanism, similar to the practice in countries such as the United Kingdom and Australia, to facilitate compliance with the new law. Unfortunately, the newspaper industry has been unable to agree on formulating such a mechanism so far. As regards books and magazines, a collective licensing mechanism is already in place but there are practical limitations as to its operational effectiveness.

Suspension

10. To address the immediate concerns of the public, the Secretary for Commerce and Industry announced on 12 April 2001 that the Government would introduce legislative amendments, as an interim measure, to suspend the application of the amending Ordinance to the key criminal provisions in the Copyright Ordinance insofar as they apply to -

- (a) works in the printed media, viz, newspapers, magazines, periodicals and books;
- (b) works in sound or television broadcast, or included in subscription cable television programmes; and
- (c) works downloaded from the Internet,

subject to some exceptions.

11. The exceptions referred to in paragraph 10 are computer programs, visual or audio recordings of music or songs, television dramas and movies. The works excluded generally have substantial commercial value and are not normally 'information' disseminated in enterprises or schools. Moreover, piracy of these works in Hong Kong and elsewhere is rampant. The amending Ordinance, which has the effect of providing a higher level of protection, should continue to apply to them.

12. To ensure that the suspension is easily understood by the public, we propose that instead of setting out the categories of the copyright works as listed in paragraph 10, the suspension should apply to all copyright works except computer programs, visual or audio recordings of music or songs, television dramas and movies. In practice, the difference between the two approaches is small as the works listed in paragraph 10 are already quite exhaustive.

13. The suspension will mean that with respect to all copyright works (subject to the exceptions set out in paragraph 11), the key criminal provisions in the Copyright Ordinance will revert to the position before the commencement of the amending Ordinance. The suspension will not affect the civil remedies available to copyright owners in respect of any copyright works.

14. In practical terms, we will suspend the criminal sanctions against, say, the possession **in the course of business (including teaching activities in educational establishments)** of an unauthorized photocopy of a newspaper cutting, an unauthorized recording of a television news programme, or an unauthorized copy of a photograph downloaded from the Internet.

15. However, the possession of such infringing copies knowingly **for dealing in the same** is still an offence after the suspension (see

paragraph 4 above). Distributing infringing copies of any copyright work to such an extent that the owner of the copyright is prejudicially affected is also an offence under section 118(1)(f) of the Copyright Ordinance. Furthermore, where the infringing copy is a work falling within those exceptions set out in paragraph 11 above, say, a computer program, a person who knowingly possesses it **in the course of business** will still be liable to criminal prosecution.

16. After the enactment of the Bill, we shall consult non-governmental organizations, the copyright industry, and various sectors of the community with a view to formulating a long-term solution to the problem. We will then introduce another Bill to make further amendments to the law.

17. We had originally intended not to stipulate an end date to the suspension so as to allow ample time for thorough examination of any proposed permanent solutions. Taking into account the views of the Legislative Council, we now propose that the suspension should end on 31 July 2002, but it may be changed by the Secretary for Commerce and Industry by a notice published in the Gazette and with the approval of the Legislative Council.

18. Pending the enactment of the Bill, the amending Ordinance remains in force. Should we receive any complaints lodged by identifiable complainants before then, we will follow up the case according to the law. However, consideration will be given to the legislative intent announced by Government and to the public interest before a final decision is made on the action to be taken.

THE BILL

19. **Clause 2(1)** provides that, with the exception of those types of copyright work stated in Clause 2(2), sections 118 and 120 (i.e. the key criminal provisions) of the Copyright Ordinance shall be read as if the amending Ordinance had not been enacted.

20. **Clause 2(2)** sets out those types of copyright work to which Clause 2(1) does not apply. They are movies, television dramas, sound recordings or films the whole or a substantial part of which consists of a musical work and any related literary work, and computer programs.

21. **Clause 3(1)** provides that the suspension shall cease to have effect on 31 July 2002. **Clauses 3(2) and (3)** empower the Secretary for Commerce and Industry to change the end date of the suspension by a notice published in the Gazette and with the approval of the Legislative Council.

22. The relevant provisions of the Copyright Ordinance and the amending Ordinance affected by the amendment Bill are at Annex B.

PUBLIC CONSULTATION

23. At its special meeting on 12 April, the Legislative Council Panel on Commerce and Industry unanimously supported the proposed suspension and a fast-track legislative process to implement the suspension. Representatives of major chambers of commerce and most of the copyright stakeholder groups who were present at the meeting also had no objection to the proposals. At its meeting on 19 April, the Panel discussed a first draft of the Bill and recommended that a subcommittee should be formed to scrutinize it. At its meeting on 25 April, the relevant subcommittee discussed a revised draft Bill submitted by the Government and supported its introduction in principle.

BASIC LAW IMPLICATIONS

24. The Department of Justice advises that the Bill does not conflict with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

25. The Department of Justice advises that the Bill is consistent with the human rights provisions of the Basic Law.

BINDING EFFECT OF THE LEGISLATION

26. The Bill will not affect the current binding effect of the Copyright Ordinance.

FINANCIAL AND STAFFING IMPLICATIONS

27. There are no financial or staffing implications arising from the Bill.

ECONOMIC IMPLICATIONS

28. The suspension will to a large extent remove the criminal sanction in relation to the printed media as a deterrent for some trade and business sectors, including the educational profession, from copying books or newspaper or magazine articles without authorization or paying a licence fee to the publishers concerned. As a result, the media and book publishing industries will lose potential revenue from this source. The precise loss is difficult to quantify.

LEGISLATIVE TIMETABLE

29. The legislative timetable will be as follows –

Publication in the Gazette	27 April 2001
First Reading and Commencement of Second Reading debate	2 May 2001
Resumption of Second Reading debate, committee stage and Third Reading	To be advised

PUBLICITY

30. We have issued a Legislative Council brief and a press release. A spokesman is available to answer public enquiries.

ENQUIRIES

31. Enquiries on this brief could be referred to Mr. Philip Chan, Principal Assistant Secretary for Commerce and Industry, on telephone number 2918 7480.

Commerce and Industry Bureau
26 April 2001

A BILL

To

Provide for the suspension of the operation of certain amendments to the Copyright Ordinance effected by the Intellectual Property (Miscellaneous Amendments) Ordinance 2000.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Copyright (Suspension of Amendments) Ordinance 2001.

2. Suspension of amendments

(1) Subject to subsection (2), with effect on and from the commencement of this Ordinance, sections 118 and 120 of the Copyright Ordinance (Cap. 528) shall be read as if the amendments effected by sections 2 to 7 and 9 to 18 of the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 (64 of 2000) had not been enacted.

(2) Subsection (1) does not apply in relation to an infringing copy of any of the following works -

- (a) a film commonly known as a movie and that has been published or is intended to be published in Hong Kong or elsewhere;
- (b) a film commonly known as a television drama and that has been published or is intended to be published in Hong Kong or elsewhere;
- (c) a sound recording or film the whole or a substantial part of which consists of a musical work and any related literary work; or
- (d) a computer program (excluding a computer program in a printed form).

(3) The terms and expressions used in this section have the same meaning as in Part II of the Copyright Ordinance (Cap. 528).

3. Lifting of suspension

(1) Section 2 shall cease to have effect on 31 July 2002.

(2) The Secretary for Commerce and Industry may, by notice published in the Gazette before the date specified in subsection (1), amend that subsection by substituting for that date such date as is specified in the notice.

(3) A notice under subsection (2) shall be subject to the approval of the Legislative Council.

(4) It is hereby declared that a notice under subsection (2) is subsidiary legislation.

Explanatory Memorandum

Sections 2 to 7 and 9 to 18 of the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 (64 of 2000) replaced the phrase "for the purpose of trade or business" with "for the purpose of, in the course of, or in connection with, any trade or business" in sections 31, 32, 95, 96, 109, 118, 120, 207, 211, 228 and 273 of the Copyright Ordinance (Cap. 528) and made other related amendments. This Bill will suspend the operation of those amendments insofar as they relate to the offences in sections 118 and 120 of the Copyright Ordinance (Cap. 528), subject to certain exceptions.

2. Clause 2(1) provides that, subject to clause 2(2), sections 118 and 120 of the Copyright Ordinance (Cap. 528) shall be read as if the amendments effected by sections 2 to 7 and 9 to 18 of the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 (64 of 2000) had not been enacted.

3. Clause 2(2) provides that clause 2(1) does not apply in relation to an infringing copy of a film, sound recording or computer program described in clause 2(2).

4. Clause 3 provides for the suspension to be lifted on 31 July 2002 or on such other date as the Secretary for Commerce and Industry may specify by notice published in the Gazette with the approval of the Legislative Council.

Relevant Provisions of the Copyright Ordinance as of 31 March 2001

Chapter: 528	Title: COPYRIGHT ORDINANCE	Gazette Number:
Section: 118	Heading: Criminal liability for making or dealing with infringing articles, etc.	Version Date: 30/06/1997

Expanded Cross Reference:
Sections 115, 116, 117

Offences

(1) A person commits an offence if he, without the licence of the copyright owner-

- (a) makes for sale or hire;
- (b) imports into Hong Kong otherwise than for his private and domestic use;
- (c) exports from Hong Kong otherwise than for his private and domestic use;
- (d) possesses for the purpose of trade or business with a view to committing any act infringing the copyright;
- (e) for the purpose of trade or business-
 - (i) sells or lets for hire;
 - (ii) offers or exposes for sale or hire;
 - (iii) exhibits in public; or
 - (iv) distributes; or
- (f) distributes otherwise than for the purpose of trade or business to such an extent as to affect prejudicially the owner of the copyright,

an infringing copy of a copyright work.

(2) Subsections (1)(b) and (c) and (4)(b) and (c) do not apply to an article in transit.

(3) It is a defence for the person charged with an offence under subsection (1), to prove that he did not know and had no reason to believe that the copy in question was an infringing copy of the copyright work.

(4) A person commits an offence if he-

- (a) makes;
- (b) imports into Hong Kong;
- (c) exports from Hong Kong;
- (d) possesses; or
- (e) sells or lets for hire, or offers or exposes for sale or hire,

an article specifically designed or adapted for making copies of a particular copyright work which article is used or intended to be used to make infringing copies of the copyright work for sale or hire or for use for the purpose of trade or business.

(5) It is a defence for the person charged with an offence under subsection (4) to prove that he did not know and had no reason to believe that the article was used or was intended to be used to make the infringing copies for sale or hire or for use for the purpose of trade or business.

(6) For the purpose of subsections (1)(b) and (3), where a person is charged with an offence under subsection (1) in respect of a copy of a copyright work which is an infringing copy by virtue only of section 35(3) and not being excluded under section 35(4), if he proves that-

- (a) he had made reasonable enquiries sufficient to satisfy himself that the copy in question was not an infringing copy of the work;
- (b) he had reasonable grounds to be satisfied in the circumstances of the case that the copy was not an infringing copy;
- (c) there were no other circumstances which would have led him reasonably to suspect that the copy was an infringing copy,

he has proved that he had no reason to believe that the copy in question was an infringing copy of the copyright work.

(7) In determining whether the person charged has proved under subsection (6) that he had no reason to believe that the copy in question was an infringing copy of the work, the court may have regard to, including but not limited to, the following-

- (a) whether he had made enquiries with a relevant trade body in respect of that category of work;
- (b) whether he had given any notice drawing attention of the copyright owner or exclusive licensee to his interest to import and to sell the copy of the work;
- (c) whether he had complied with any code of practice that may exist in respect of the supply of that category of work;
- (d) whether the response, if any, to those enquiries made by the defendant was reasonable and timely;
- (e) whether he was provided with the name, address and contact details of the copyright owner or exclusive licensee (as the case may be);
- (f) whether he was provided with the date of first day of publication of the work;
- (g) whether he was provided with proof of any relevant exclusive licence.

(8) A person commits an offence if he has in his possession an article knowing or having reason to believe that it is used or is intended to be used to make infringing copies of any copyright work for sale or hire or for use for the purpose of trade or business.

(9) Sections 115 to 117 (presumptions as to various matters connected with copyright) do not apply to proceedings for an offence under this section. <*Note-Exp. X-Ref.: Sections 115, 116, 117*>

[cf. 1988 c. 48 s. 107 U.K.]

Chapter: 528	Title: COPYRIGHT ORDINANCE	Gazette Number:
Section: 120	Heading: Making infringing copies outside Hong Kong, etc.	Version Date: 30/06/1997

Expanded Cross Reference:
Sections 115, 116, 117

(1) A person commits an offence if he makes outside Hong Kong, for export to Hong Kong otherwise than for his private and domestic use, any article that he knows would, if it were made in Hong Kong, constitute an infringing copy of a copyright work.

(2) A person commits an offence if he makes outside Hong Kong an article specifically designed or adapted for making copies of a particular copyright work knowing or having reason to believe that it is to be used or is intended to be used in Hong Kong for making an infringing copy of the copyright work for sale or hire or for use for the purpose of trade or business.

(3) A person commits an offence if he makes outside Hong Kong or exports from Hong Kong an article specifically designed or adapted for making copies of a particular copyright work, knowing or having reason to believe that-

- (a) the article is to be used or is intended to be used outside Hong Kong for making another article for export to Hong Kong; and
- (b) the latter article mentioned in paragraph (a) would, if it were made in Hong Kong, constitute an infringing copy of the copyright work.

(4) A person who, in Hong Kong or elsewhere, aids, abets, counsels or procures the commission by another person of an offence under subsection (1), (2) or (3) commits that offence as a principal.

(5) The offences under subsections (1), (2) and (3) are without prejudice to the offences under section 118.

(6) A person who commits an offence under subsection (1), (2) or (3) is liable on conviction on indictment to a fine of \$500000 and to imprisonment for 8 years.

(7) For the purpose of this section, "article" (物品) does not include an article in transit.

(8) Sections 115 to 117 (presumptions as to various matters connected with copyright) do not apply to proceedings for an offence under this section. <*Note-Exp. X-Ref.: Sections 115, 116, 117*>

Relevant Provisions of the Copyright Ordinance as of 1 April 2001

Chapter: 528	Title: COPYRIGHT ORDINANCE	Gazette Number: L.N. 46 of 2001
Section: 118	Heading: Criminal liability for making or dealing with infringing articles, etc.	Version Date: 01/04/2001

Expanded Cross Reference:
115, 116, 117

Offences

- (1) A person commits an offence if he, without the licence of the copyright owner-
 - (a) makes for sale or hire;
 - (b) imports into Hong Kong otherwise than for his private and domestic use;
 - (c) exports from Hong Kong otherwise than for his private and domestic use;
 - (d) possesses for the purpose of, in the course of, or in connection with, any trade or business with a view to committing any act infringing the copyright; (Amended 64 of 2000 s. 7)
 - (e) for the purpose of, in the course of, or in connection with, any trade or business- (Amended 64 of 2000 s. 7)
 - (i) sells or lets for hire;
 - (ii) offers or exposes for sale or hire;
 - (iii) exhibits in public; or
 - (iv) distributes; or
 - (f) distributes (otherwise than for the purpose of, in the course of, or in connection with, any trade or business) to such an extent as to affect prejudicially the owner of the copyright, (Amended 64 of 2000 s. 7)
an infringing copy of a copyright work.
- (2) Subsections (1)(b) and (c) and (4)(b) and (c) do not apply to an article in transit.
- (3) It is a defence for the person charged with an offence under subsection (1), to prove that he did not know and had no reason to believe that the copy in question was an infringing copy of the copyright work.
- (4) A person commits an offence if he-
 - (a) makes;
 - (b) imports into Hong Kong;
 - (c) exports from Hong Kong;
 - (d) possesses; or
 - (e) sells or lets for hire, or offers or exposes for sale or hire, an article specifically designed or adapted for making copies of a particular copyright work which article is used or intended to be used to make infringing copies of the copyright work for sale or hire or for use for the purpose of, in the course of, or in connection with, any trade or business. (Amended 64 of 2000 s. 7)
- (5) It is a defence for the person charged with an offence under subsection (4) to prove that he did not know and had no reason to believe that the article was used or was intended to be used to make the infringing copies for sale or hire or for use for the purpose of, in the course of, or in connection with, any trade or business. (Amended 64 of 2000 s. 7)
- (6) For the purpose of subsections (1)(b) and (3), where a person is charged with an offence under subsection (1) in respect of a copy of a copyright work which is an infringing copy by virtue only of section 35(3) and not being excluded under section 35(4), if he proves that-
 - (a) he had made reasonable enquiries sufficient to satisfy himself that the copy in question was not an infringing copy of the work;

- (b) he had reasonable grounds to be satisfied in the circumstances of the case that the copy was not an infringing copy;
- (c) there were no other circumstances which would have led him reasonably to suspect that the copy was an infringing copy, he has proved that he had no reason to believe that the copy in question was an infringing copy of the copyright work.

(7) In determining whether the person charged has proved under subsection (6) that he had no reason to believe that the copy in question was an infringing copy of the work, the court may have regard to, including but not limited to, the following-

- (a) whether he had made enquiries with a relevant trade body in respect of that category of work;
- (b) whether he had given any notice drawing attention of the copyright owner or exclusive licensee to his interest to import and to sell the copy of the work;
- (c) whether he had complied with any code of practice that may exist in respect of the supply of that category of work;
- (d) whether the response, if any, to those enquiries made by the defendant was reasonable and timely;
- (e) whether he was provided with the name, address and contact details of the copyright owner or exclusive licensee (as the case may be);
- (f) whether he was provided with the date of first day of publication of the work;
- (g) whether he was provided with proof of any relevant exclusive licence.

(8) A person commits an offence if he has in his possession an article knowing or having reason to believe that it is used or is intended to be used to make infringing copies of any copyright work for sale or hire or for use for the purpose of, in the course of, or in connection with, any trade or business. (Amended 64 of 2000 s. 7)

(8A) It is immaterial for the purpose of subsections (1)(d) and (e), (4) and (8) whether or not the trade or business consists of dealing in infringing copies of copyright works. (Added 64 of 2000 s. 7)

(9) Sections 115 to 117 (presumptions as to various matters connected with copyright) do not apply to proceedings for an offence under this section. <*Note - Exp. X-Ref.: Sections 115, 116, 117

[cf. 1988 c. 48 s. 107 U.K.]

Chapter: 528	Title: COPYRIGHT ORDINANCE	Gazette Number: L.N. 46 of 2001
Section: 120	Heading: Making infringing copies outside Hong Kong, etc.	Version Date: 01/04/2001

Expanded Cross Reference:
115, 116, 117

(1) A person commits an offence if he makes outside Hong Kong, for export to Hong Kong otherwise than for his private and domestic use, any article that he knows would, if it were made in Hong Kong, constitute an infringing copy of a copyright work.

(2) A person commits an offence if he makes outside Hong Kong an article specifically designed or adapted for making copies of a particular copyright work knowing or having reason to believe that it is to be used or is intended to be used in Hong Kong for making an infringing copy of the copyright work for sale or hire or for use for the purpose of, in the course of, or in connection with, any trade or business. (Amended 64 of 2000 s. 9)

(2A) It is immaterial for the purpose of subsection (2) whether or not the trade or business consists of dealing in infringing copies of copyright works. (Added 64 of 2000 s. 9)

(3) A person commits an offence if he makes outside Hong Kong or exports from Hong Kong an article specifically designed or adapted for making copies of a particular copyright work, knowing or having reason to believe that-

- (a) the article is to be used or is intended to be used outside Hong Kong for making another article for export to Hong Kong; and
- (b) the latter article mentioned in paragraph (a) would, if it were made in Hong Kong, constitute an infringing copy of the copyright work.

(4) A person who, in Hong Kong or elsewhere, aids, abets, counsels or procures the commission by another person of an offence under subsection (1), (2) or (3) commits that offence as a principal.

(5) The offences under subsections (1), (2) and (3) are without prejudice to the offences under section 118.

(6) A person who commits an offence under subsection (1), (2) or (3) is liable on conviction on indictment to a fine of \$500000 and to imprisonment for 8 years.

(7) For the purpose of this section, "article" (物品) does not include an article in transit.

(8) Sections 115 to 117 (presumptions as to various matters connected with copyright) do not apply to proceedings for an offence under this section.
<*Note - Exp. X-Ref.: Sections 115, 116, 117*>

Relevant Provisions of the Intellectual Property (Miscellaneous Amendments) Ordinance 2000

INTELLECTUAL PROPERTY (MISCELLANEOUS
AMENDMENTS) ORDINANCE

Ord. No. 64 of 2000 A2329

HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE NO. 64 OF 2000

L.S.

TUNG Chee-hwa
Chief Executive
6 July 2000

An Ordinance to amend the Copyright Ordinance, the Prevention of Copyright Piracy Ordinance and the Patents Ordinance.

[]

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Intellectual Property (Miscellaneous Amendments) Ordinance 2000.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Commerce and Industry by notice in the Gazette.

Copyright Ordinance

2. Secondary infringement: possessing or dealing with infringing copy

Section 31 of the Copyright Ordinance (Cap. 528) is amended—

(a) by renumbering it as section 31(1);

(b) in subsection (1)—

(i) by repealing paragraph (a) and substituting—

"(a) possesses for the purpose of, in the course of, or in connection with, any trade or business;"

(ii) by repealing paragraph (c) and substituting—

(iii) \N

"(c) exhibits in public or distributes for the purpose of, in the course of, or in connection with, any trade or business; or";

- (iii) in paragraph (d), by repealing "otherwise than for the purpose of trade or business" and substituting "(otherwise than for the purpose of, in the course of, or in connection with, any trade or business)";
- (c) by adding—
 - "(2) It is immaterial for the purpose of subsection (1)(a) and (c) whether or not the trade or business consists of dealing in infringing copies of copyright works."

**3. Secondary infringement: providing means
for making infringing copies**

Section 32 is amended—

- (a) in subsection (1)(c), by repealing "for the purpose of trade or business" and substituting "for the purpose of, in the course of, or in connection with, any trade or business";
- (b) by adding—
 - "(3) It is immaterial for the purpose of subsection (1)(c) whether or not the trade or business consists of dealing in articles specially designed or adapted for making copies of copyright works."

**4. Infringement of right by possessing or
dealing with infringing article**

Section 95 is amended—

- (a) in subsection (1)—
 - (i) by repealing paragraph (a) and substituting—
 - "(a) possesses for the purpose of, in the course of, or in connection with, any trade or business;"
 - (ii) by repealing paragraph (c) and substituting—
 - "(c) exhibits in public or distributes for the purpose of, in the course of, or in connection with, any trade or business; or";
 - (iii) in paragraph (d), by repealing "otherwise than for the purpose of trade or business" and substituting "(otherwise than for the purpose of, in the course of, or in connection with, any trade or business)";
- (b) by adding—
 - "(1A) It is immaterial for the purpose of subsection (1)(a) and (c) whether or not the trade or business consists of dealing in infringing articles."

5. False attribution of work

Section 96 is amended—

- (a) in subsections (5) and (6), by repealing "for the purpose of trade or business" and substituting "for the purpose of, in the course of, or in connection with, any trade or business";
- (b) by adding—
 - "(6A) It is immaterial for the purpose of subsections (5) and (6) whether or not the trade or business consists of dealing in—
 - (a) works or copies of works in or on which there are false attributions; or
 - (b) altered works or copies of altered works."

6. Order for delivery up

Section 109 is amended—

- (a) in subsection (1)(a), by repealing "for the purpose of trade or business" and substituting "for the purpose of, in the course of, or in connection with, any trade or business";
- (b) by adding—
 - "(1A) It is immaterial for the purpose of subsection (1)(a) whether or not the trade or business consists of dealing in infringing copies of copyright works."

7. Criminal liability for making or dealing with infringing articles, etc.

Section 118 is amended—

- (a) in subsection (1)—
 - (i) in paragraphs (d) and (e), by repealing "for the purpose of trade or business" and substituting "for the purpose of, in the course of, or in connection with, any trade or business";
 - (ii) in paragraph (f), by repealing "otherwise than for the purpose of trade or business" and substituting "(otherwise than for the purpose of, in the course of, or in connection with, any trade or business)";
- (b) in subsections (4), (5) and (8), by repealing "for the purpose of trade or business" and substituting "for the purpose of, in the course of, or in connection with, any trade or business";

(c) by adding—

"(8A) It is immaterial for the purpose of subsections (1)(*d*) and (*e*), (4) and (8) whether or not the trade or business consists of dealing in infringing copies of copyright works."

9. Making infringing copies outside Hong Kong, etc.

Section 120 is amended—

- (a) in subsection (2), by repealing "for the purpose of trade or business" and substituting "for the purpose of, in the course of, or in connection with, any trade or business";
- (b) by adding—
 - "(2A) It is immaterial for the purpose of subsection (2) whether or not the trade or business consists of dealing in infringing copies of copyright works."

10. Minor definitions

Section 198 is amended—

- (a) by renumbering it as section 198(1);
- (b) by adding—
 - "(2) In sections 31(2), 32(3), 95(1A), 96(6A), 109(1A), 118(8A) and 120(2A), "dealing in" (經營) includes buying, selling, letting for hire, importing, exporting and distributing."

11. Index of defined expressions

Section 199 is amended—

- (a) by repealing "198" wherever it appears and substituting "198(1)";
- (b) by adding—
 - "dealing in section 198(2)".

12. Infringement of performer's rights by importing, exporting, possessing or dealing with infringing fixation

Section 207 is amended—

(a) by repealing subsection (1)(b) and substituting—

"(b) for the purpose of, in the course of, or in connection with, any trade or business—

- (i) possesses;
- (ii) makes available to the public;
- (iii) sells or lets for hire;
- (iv) offers or exposes for sale or hire; or
- (v) distributes,";

(b) by adding—

"(1A) It is immaterial for the purpose of subsection (1)(b) whether or not the trade or business consists of dealing in infringing fixations."

13. Infringement of fixation rights by importing, exporting, possessing or dealing with infringing fixation

Section 211 is amended—

(a) by repealing subsection (1)(b) and substituting—

"(b) for the purpose of, in the course of, or in connection with, any trade or business—

- (i) possesses;
- (ii) makes available to the public;
- (iii) sells or lets for hire;
- (iv) offers or exposes for sale or hire; or
- (v) distributes,";

(b) by adding—

"(1A) It is immaterial for the purpose of subsection (1)(b) whether or not the trade or business consists of dealing in infringing fixations."

14. Order for delivery up

Section 228 is amended—

(a) in subsection (1), by repealing "for the purpose of trade or business" and substituting "for the purpose of, in the course of, or in connection with, any trade or business";

INTELLECTUAL PROPERTY (MISCELLANEOUS **Ord. No. 64 of 2000** A2339
AMENDMENTS) ORDINANCE

(b) by adding—

"(1A) It is immaterial for the purpose of subsection (1) whether or not the trade or business consists of dealing in infringing fixations."

**15. Expressions having same meaning
as in copyright provisions**

Section 238 is amended by adding—

"(1A) In sections 207(1A), 211(1A) and 228(1A), "dealing in" (經營) includes buying, selling, letting for hire, importing, exporting and distributing."

16. Index of defined expressions

Section 239 is amended by adding—

(a) by repealing "198" opposite the expression "business" and substituting "198(1)";

(b) by adding—

"dealing in section 238(1A)".

**17. Devices designed to circumvent
copy-protection**

Section 273 is amended—

(a) in subsection (2)(a), by repealing "for the purpose of trade or business" and substituting "for the purpose of, in the course of, or in connection with, any trade or business";

(b) by adding—

"(6) It is immaterial for the purpose of subsection (2)(a) whether or not the trade or business consists of dealing in devices or means specifically designed or adapted to circumvent forms of copy-protection.

(7) In subsection (6), "dealing in" (經營) includes buying, selling, letting for hire, importing, exporting and distributing."

18. Copyright: Transitional provisions and savings

Schedule 2 is amended, in paragraph 40, by repealing "198" and substituting "198(1)".