

**Letterhead of Copyright Agency Limited  
AUTHORS ARTISTS PUBLISHERS READERS**

CB(1) 1386/00-01

29 May 2001

Hon SIN Chung-Kai  
Chairman  
Legislative Council Committee  
3rd Floor, Citibank Tower  
3 Garden Road, Central  
HONG KONG

Dear SIN Chung-Kai

IFRRO appreciates the opportunity to address the Committee made available to us on 22 May 2001. In addition to our oral submissions made at that hearing, IFRRO makes the further following written submission for the Committee's consideration.

We would appreciate being kept informed of the progress of the suspension legislation in Hong Kong.

Yours faithfully

**Michael Fraser**  
**Chair**  
**Asia Pacific Committee**  
**IFRRO**

**FURTHER SUBMISSION FROM IFRRO ON THE INTELLECTUAL  
PROPERTY (MISCELLANEOUS AMENDMENTS) ORDINANCE 2000 AND  
THE COPYRIGHT (SUSPENSION OF AMENDMENTS) BILL 2001**

1. IFRRO has already made two written submissions on this matter, on 1 May 2001 and 18 May 2001. We ask that the Committee take those submissions into consideration in its current deliberations.

**IFRRO**

2. IFRRO is an international non government organisation with consultative status before the United Nations. It has 39 collecting society members in 34 countries, representing the interests of rightsholders in print and digital materials. IFRRO also represents 58 national and international author and publisher groups.

**Intellectual Property (Miscellaneous Amendments) Ordinance 2000**

3. Since 1996, the intellectual property statutes of countries around the world have been amended or replaced, to comply with the TRIPS agreement and the WIPO Copyright Treaty. As part of the review, many countries are paying specific attention to the effectiveness and scope of their enforcement mechanisms for intellectual property in particular, copyright.
4. In Hong Kong, significant and successful efforts have been made in redrafting the Copyright Ordinance and in taking practical measures to combat piracy in copyright products. The coming into force of the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 ("the Amendment Ordinance") has been an important milestone in the protection of intellectual property rights in Hong Kong.
5. The Amendment Ordinance has drawn encouraging and supportive comments from many countries. This is because of its recognition that a comprehensive and practical approach to enforcement of copyright can only be a joint undertaking by copyright owners and government.
6. Publishers and authors in Hong Kong also welcomed the Amendment Ordinance as it recognised that there was significant economic harm to copyright owners from infringement by photocopying and book piracy in areas other than businesses built on the sale of infringing products.
7. For example, copyshops in Hong Kong have structured their businesses so that they sell the service of making copies rather than selling the copies themselves. Consequently, although engaged in significant and otherwise infringing copying of copyright books, on technical grounds these copyshop proprietors were not guilty of a criminal offence. The Amendment Ordinance closed that loophole, and permitted effective action against such blatant infringers.
8. The issues addressed by the Amendment Ordinance are being reviewed in many other countries. For example in Australia the House of Representatives Standing

Committee on Legal and Constitutional Affairs has recently delivered a report to government on the enforcement of copyright in Australia called *Cracking Down on Copycats*

([www.aph.gov.au/house/committee/LACA/copyrightenforcement/contents.htm](http://www.aph.gov.au/house/committee/LACA/copyrightenforcement/contents.htm))

9. IFRRO's view is that the Amendment Ordinance is broadly consistent with the standards of intellectual property protection and criminal penalties imposed for copyright infringement in many other countries. We refer to the comparative analysis of the laws in other countries undertaken by Stephanie Faulkner on IFRRO's behalf, which addresses this point.
10. IFRRO acknowledges the concern in the Hong Kong business and education community as to the potential for criminal liability under the Amendment Ordinance.
11. However, IFRRO believes that concern is misconceived. In our experience only blatant infringers and pirates are prosecuted under comparable legislation in other countries.
12. Also as Hong Kong's Copyright Ordinance does not impose criminal or civil liability on uses of copyright material which do not "conflict with a normal exploitation of a work and do not unreasonably prejudice the legitimate interests of the right holder", there is additional protection for casual and innocent copyright infringers.
13. Moreover, IFRRO notes that it is a complete defence under Hong Kong's current legislation that a person did not know or had no reason to believe that they were dealing with infringing articles. This defence provides a strong protection to "innocent" infringers and those who negligently infringe copyright.
14. Further, if the Hong Kong government believes that the concerns of users are well founded authors and publishers would be pleased to work with the Hong Kong government to develop guidelines making it clear in which circumstances those authors and publishers would lodge criminal complaints.
15. Such an approach is preferable to effectively condoning infringement through the draft Copyright (Suspension of Amendments) Bill 2001.

### **Licensing Options - HKRRLS**

16. The reaction to the Amendment Ordinance since it came into force on 1 April 2001 has been what can only be characterised as hysteria - a fear that even ad hoc photocopying means that the copier will be guilty of a criminal offence because there are no licensing options available to protect legitimate users of copyright material from criminal prosecution.
17. This is obviously not the case, as our comments above make clear. However, an easy means of avoiding criminal prosecution is through taking a license with HKRRLS.

18. IFRRO regrets the comments of government officials such as the apology by the Secretary for Commerce and Industry on 12 April 2001 which have led to the public forming the view that there is no effective licensing alternative for copyright users. IFRRO refers to the comments made by Viking Yam from HKRRLS at the Committee hearing on 22 May 2001 that since the news of the Suspension Bill was announced that licence enquiries have dropped dramatically.
19. HKRRLS is in its early stages of development, but already has concluded licences with schools, the government and a number of businesses. It would be disastrous if its future were to be affected by careless comments about the effectiveness of the licensing systems, the intransigence of some users and the decision at this stage by newspaper publishers not to join with other copyright owners in blanket licensing through HKRRLS.
20. Unfortunately considerable damage has already been done to the standing of HKRRLS by the introduction of the Suspension Bill, and the accompanying publicity. If the Suspension Bill is passed, irrespective of the time limit now included in the draft, it will be very difficult to re-establish credibility for any collective licensing organisation in the eyes of the copyright user groups.
21. If HKRRLS founders, then in 2002 when the Ordinance is re-introduced, there will be no collective licensing body covering the international and local repertoire of works contained in textbooks, periodicals, journals and international newspapers.

### **The Suspension Bill**

22. IFRRO has a number of concerns about the proposed Copyright (Suspension of Amendments) Bill 2001 ("the Suspension Bill").

### *Encouragement of Pirates*

23. The International Intellectual Property Alliance estimates that \$US2 million is lost each year in Hong Kong as a result of piracy. Much of this piracy takes place in copyshops, which will copy whole books on request. The effect of the Suspension Bill is to indicate to those copyshops that structuring their businesses so that they do not directly sell the infringing copies is acceptable to the government.
24. IFRRO is concerned that the statement by a senior government representative describing the current Intellectual Property (Miscellaneous Amendments) Ordinance 2000 as a bad law gives implicit encouragement to the copyright piracy industry.
25. In IFRRO's view, the proposed Suspension Bill sends a message to other countries that the Hong Kong government's commitment to copyright enforcement is wavering.

### *Wide Scope of the Suspension Bill*

26. IFRRO is also concerned that the scope and effect of the Suspension Bill will be wider than the purpose for which it is introduced. The Bill, rather than focusing on the specific areas of concern which prompted its introduction such as newspapers, applies to all printed books and journals and downloads from the internet.

### *Value Judgements about Copyright Works*

27. The Suspension Bill discriminates between different classes of copyright works, putting literary works into a "second class". This two-tier standard of protection is unique in intellectual property statutes around the world, and sends a clear message to users and owners about the Hong Kong government's priorities - that some copyright owners are more important than others.
28. The absurdity of this position is demonstrated in an example of a corporation, purchasing a set of licensed newsclippings, and then making multiple copies of them for staff to use in the course of their employment. Although infringing copyright in the newspapers the corporation would not be criminally liable for this activity.
29. Contrast this situation with a corporation purchasing one set of licensed software, and then making multiple copies of it for staff to use in the course of their employment. In this example, the corporation would be criminally liable for the activity.
30. If, however, the government decides to press ahead with the Suspension Bill, then IFRRO submits that the categories of copyright materials to which it applies be narrowed as much as possible, so that copyright pirates are not encouraged by the Hong Kong government.
31. IFRRO notes that the Suspension Bill discriminates in the area of broadcasts between current affairs and drama, lifting the effect of Amendment Ordinance in respect of current affairs but keeping it in place in respect of television drama, such as films. Why is a similar distinction not made in respect of literary works, leaving the Amendment Ordinance in place for books and journals but lifting it in respect of news and current affairs?

### **IFRRO's Submission**

32. IFRRO submits that the Amendment Ordinance should not be suspended at all. There are other mechanisms for achieving the desired results, such as copyright owners cooperating with the government by offering a grace period or by the government developing sentencing guidelines.
33. IFRRO submits that if the Suspension Bill is enacted it should be redrafted so that it applies only to areas of concern, such as newspapers. IFRRO submits that the Amendment Ordinance should not be suspended for books and journals as licensing mechanisms for legitimate users exist.

34. IFRRO also submits that the period for which the Suspension Bill is in force must be certain. In IFRRO's view significant gains have been made in the last few weeks as copyright owners and users struggle to come to terms with the changes to the Copyright Ordinance in Hong Kong. In IFRRO's view, this momentum would be lost if there were a discretion for the effect of the Suspension Bill to be extended for further periods of time.
35. IFRRO looks forward to working with the Hong Kong government in the future development of copyright law in Hong Kong.
36. If you require any further information from IFRRO, we would be happy to provide it to you.

29 May 2001