

Copyright (Suspension of Amendments) Bill 2001
Position of the Hong Kong General Chamber of Commerce
May 2001

Reprographic rights

1. The Chamber was a champion for the suspension of the application of the Intellectual Property (Miscellaneous Amendments) Ordinance to reprographic rights. It is our view that the administration of copyrights should be guided by the principle of reasonableness, under which casual photocopying in the work place should not be regarded as copyright infringement and should not be criminalised. Our position is detailed in our previous paper to the Legislative Council Trade and Industry Panel on 12 April entitled “Reprographic Rights and Fair Dealing”.
2. We support this aspect of the Suspension Bill. As a temporary measure it will give time for the Administration to devise suitable changes in the copyright law so as to allow casual photocopying in the work place. The Bill will also give time for the rights holders (publishers) to develop, based on the principle of fair dealing, a credible system of collective administration of copyrights that would cater to the different needs of different sectors in a fair and reasonable manner.

Coverage of the Suspension Bill

3. With the same sense of reasonableness and fair play, we support the application of the Suspension Bill to broadcasting and Internet downloading of the same nature, i.e. the casual copying of television broadcasts or cable programmes or downloading from the Internet for the purpose of timely and convenient information dissemination in the work place. This should, however, apply only to information dissemination and not to works which have substantial commercial value such as computer programmes, music, songs, television dramas and movies, which should clearly be specified as exceptions to the coverage of the Suspension Bill.
4. In the Legislative Council brief it is suggested that instead of listing categories of application, the suspension “apply to all copyright works except computer programmes, visual or audio recordings of music or songs, television dramas and movies.” We support this approach as it would limit the application of the Amendment Ordinance to the sectors that were originally intended.
5. In terms of timing, the Administration has suggested that the suspension end on 31 July 2002. This would be preferable to an indefinite period. We note that the end date is subject to change by the Legislative Council.

Software

6. We are concerned over recent suggestions from some quarters of the community that the Suspension Bill be applied also to computer software, if not across the

board, thus rendering the Amendments Ordinance no longer applicable. We do not agree with such a view.

7. We have emphasised time and again that despite our opposition to criminalising casual photocopying, we remain a strong supporter of the Amendments Ordinance in combating genuine infringement of rights in the course of business. For Hong Kong to become an innovation-driven, knowledge-based economy, a strong regime of IPR protection is crucial. While one must not go overboard by applying it to photocopying or downloading of information of a casual and not-for-profit nature, a line has to be drawn between that and the use of unauthorised copies of software, which is clearly an infringement of copyright.
8. Since the February 1999 consultation on strengthening the legal regime for IPR protection, much progress has been made in educating the business sector and the community about the importance of respecting intellectual property rights. That the use of unauthorised software in business should be illegal, is well-founded in IPR law; it is also accepted common sense. Having made the effort to clamp down on piracy and counterfeiting, to revert to a weaker regime will be to nullify years of effort in IPR protection.
9. As Hong Kong strives to become a centre of innovation and technology, effective protection of IPR has taken on an added significance. To tolerate software piracy in business – which is what full application of the Suspension Bill will mean – will be a setback for the burgeoning local software and IT industry as well as damaging to Hong Kong's international reputation. We urge the Bills Committee to consider this carefully and to uphold the original intention of the Suspension Bill, namely, to suspend the application of criminal sanctions only to photocopying, broadcasting and downloading of information.

Parallel imports

10. We understand there is also a suggestion that the suspension apply to parallel importation of software, which at present attracts criminal sanctions for 18 months commencing from first publication anywhere in the world. We note that the present provision, which was enacted under the Copyright Ordinance of 1997, is contrary to the earlier Law Reform Commission recommendation which was to decriminalise parallel importation. The Chamber is open-minded on the issue which we believe merits detailed consideration.