

COMMENTS FROM MEMBERS OF LAW SOCIETY'S INTELLECTUAL PROPERTY COMMITTEE

1. It took a copyright practitioner, a good 2 hours to sort out and make some sense out of the mess of the Copyright Ordinance, the IP (Misc Amendments) Ordinance, the Copyright (Suspension of Amendments) Bill 2001 which was gazetted, and the proposed Bills Committee stage further amendments. What we are seeing is The Ordinance, Amendments, Suspension with a carve out, and then exemptions to the carve out. Will members of the public be able to understand all these and avoid criminal liability?

Is it possible to take a more direct route by suspending the whole of the IP (Misc. Amendments) Ordinance, and then “carving out” from the suspension the civil and criminal liability for possessing and dealings in infringing copies of :

- (a) films and sound recordings for the purpose of, in the course of, or in connection with, any trade or business, and
- (b) computer programs for the purpose of, in the course of, or in connection with, any trade or business, with special definition of infringing copies in relation to computer programs to allow for parallel importation even within the first 18 months of first publication of the computer program?

By adopting this approach the public will find it easier to realise that the exemption for parallel imports apply only to computer programs, not to films and sound recordings.

2. From feedback in the press and collected from clients, it appears that the public does not understand fully in the first place the effect of the amendments introduced in the IP (Misc. Amendments) Ordinance. Many people were under the mistaken impression that the IP (Misc. Amendments) Ordinance created liability for copying which is *incidental to and not the main purpose of their trade or business*. **They simply do not realise that the act of copying, if unauthorised, is primary infringement that carries civil and criminal liability all the time, before and after the IP (Misc. Amendments) Ordinance.**

Comments particularly from academia is that the Copyright Ordinance prevents web-based education and distant learning, and deters the development of knowledge, because the statutory exceptions to copyright infringement in the Copyright Ordinance simply do not anticipate the use of IT for education.

For example, a lecturer copying a passage from an article on the blackboard by hand for the purpose of instruction is not regarded as infringement, but if he types out the passage and post it on the web for students to access, this is outside the statutory exemption and will be copyright infringement.

The issue is not something to be addressed at this stage when the pressing issue is to put a stop to something that Hong Kong is not ready to implement yet, but it highlights several problems that have to be addressed once the suspension is in place: i.e. lack of knowledge of the public about copyright and what constitutes infringement, and whether the law is sufficiently up to date to provide for activities that nowadays are increasingly conducted electronically and via computer networks.

**Intellectual Property Committee
The Law Society of Hong Kong
28 May 2001**