

Practitioners Affairs

CWP-19/01/48730

2 May 2001

Mrs. Florence Lam
Clerk to Sub-Committee
Legislative Council Building
8 Jackson Road, Central, Hong Kong

Dear Mrs. Lam,

Re: Draft Copyright (Suspension of Amendments) Bill 2001

I refer to my letter dated 26 April 2001 and the following are additional comments prepared by the Law Society's Intellectual Property Committee:-

1. It is not clear why the Government should suspend the application of the amendments to a printed version of a computer program and yet enforcing the law against the computer program itself.
2. Will certain sectors of the public be concerned because of the special treatment given to computer software, films and sound recordings?

Yours sincerely,

Joyce Wong
Director of Practitioners Affairs
e-mail: dpa@hklawsoc.org.hk

cc Members of Intellectual Property Committee

Letterhead of LAWSOCIETY OF HONG KONG

Practitioners Affairs

Our Ref : CWP-19/01/48665
Your Ref : CIB 09/46/12
Direct Line :

BY FAX/POST

26 April, 2001

Ms. Laura Tsoi
for Secretary for Commerce and Industry
Commerce and Industry Bureau
Level 29, One Pacific Place
88 Queensway, Hong Kong

Dear Ms. Tsoi,

Re: Draft Copyright (Suspension of Amendments) Bill 2001

I refer to your letter dated 19 April 2001 and attach the comments prepared by the Law Society's Intellectual Property Committee.

Yours sincerely,

Joyce Wong
Director of Practitioners Affairs
e-mail: dpa@hklawsoc.org.hk

Encl.

**Law Society of Hong Kong
IP Sub-Committee**

**Comments
Copyright (Suspension of Amendments) Bill 2001**

S2(1)(a)(b)

There are works in media other than newspapers, magazines, periodicals such as leaflets, loose pieces of papers

S2(1)(f)(g) and S2(3)(a)(b)

It gives exemptions to all underlying works included in the broadcast except movies, dramas and songs. This means that where a recording of a movie, dramas or songs is made from a broadcast and which is then used "for the purpose of.....trade or business", it is still a criminal offence.

Civil remedies under the provisions of "possession....." are available to the copyright owners and it will not be difficult for them to establish its case. Is it necessary to make it criminal irrespective of the scale of infringement? Is such recording rampant?

(3)(b) refers to "a musical work and any related literary work". Does the "related literary work" refer to the lyrics? If so, what if the song consists only of melody without the lyrics?

S2(1)(g) and S2(5)

Some computer programs are freely downloadable from the Internet e.g. ACROBAT, ICQ, EXPLORER, MEDIA PLAYER etc. because such downloading is either with the express or implied consent of the copyright owner. Therefore they will not be "infringing copies" and hence the provision of "possessing (an infringing copy) for the purpose of, in the course of or in connection with a trade or business with a view to committing any act of copyright infringement" will not bite.

There are other computer programs (e.g. OFFICE etc) which have been uploaded to the Internet with malice. Therefore it is an infringing copy. Possessing a copy with a view to using it may constitute violation of the provision.

It requires ordinary people to distinguish between what are infringing or not infringing copies, creating a heavy burden on them and may well discourage the use of the Internet.