

Letterhead of International Federation of Reproduction Rights Organisations

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The Hon. Kenneth TING Woo-shou JP
Chair
Panel on Commerce & Industry
1/F, 22 Kai Cheung Road
Kowloon Bay
Kowloon

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Dear Mr Ting,

**INTELLECTUAL PROPERTY (MISCELLANEOUS AMENDMENTS)
ORDINANCE 2000**

It has been brought to my attention that urgent measures are currently in train within the Hong Kong Legislative Council to suspend the implementation of the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 in relation to the reproduction rights in newspapers, magazines, periodicals and books in both the analogue and digital environments.

If the reports are correct, this suspension will cause immense damage to authors, visual artists, photographers and publishers worldwide and will totally undermine the efforts currently being made by them to stem the tide of piracy in the SAR and elsewhere in the region. Although it may be an unintended consequence, such action by the Hong Kong government will send a very clear signal to infringers and pirates throughout the region that the Hong Kong government is beholden to the software industry but is not serious about combating other forms of piracy: that all forms of unauthorised reproduction of literary and artistic works will not only be tolerated but that indeed it may be done without risk of any penalty or censure.

IFRRO, as the international non-profit association representing reprographic collecting societies and authors and publishers throughout the world, is particularly disturbed that the suspension is being rushed through the Council with alarming haste during this current month. I was in Hong Kong as recently as 3, 4 and 5 April and met with Mr. Stephen Selby and Mr. Peter Cheung of the Intellectual Property Department on two occasions during that visit. At no time during the meetings was there any suggestion that the Council was considering suspension of the Ordinance. I have no doubt that they would have advised me of the impending developments had there been any thought to suspend the Ordinance at that time. As my meetings took place a mere two weeks' ago, it is accordingly with dismay that I now learn of the recent developments in Hong Kong.

The fledgling reprographic rights licensing society - HKRRLS - will be fatally compromised if the Legislative Council proceeds to suspend the Ordinance. I doubt that HKRRLS will ever be able to recover from such a blow. Its operations will be totally undermined with users, who already photocopy beyond the limits permitted under the fair dealing provisions with the confidence of knowing that the earlier Ordinance has no teeth whatsoever. It will also undermine HKRRLS' efforts to persuade rightsholders to voluntarily give it the mandates that would enable it to provide a licensing service both for users and rightsholders. I doubt that HKRRLS will ever recover from such a blow, moreover I doubt whether a voluntary model of administration of reprographic rights will ever be able to get off the ground after such politically and commercially damaging action by the Hong Kong government.

Commercial piracy of text books on a scale unimaginable at present will also be unleashed as a result of any such suspension. It is more than likely that commercial profiteers based in other territories will see great merit in relocating to Hong Kong, where the official attitude to piracy of books etc. will be proven by the suspension to have been less than serious and committed.

IFRRO accordingly objects in the strongest terms to the proposed suspension and deplores the Government's secrecy and failure to consult with the industries and rightsholders whose rights will be so dreadfully compromised by this most unfortunate retrograde action. It is not an adequate response to single out the publishing and reprographic industries in this fashion merely because of public ire at finally having a legislative model of which businesses must take notice.

The solution of allowing the Amending Ordinance to remain partially in effect, but only in relation to industries that are perceived as having more clout, is the worst of all worlds and will reflect extremely badly on Hong Kong both at home and abroad.

IFRRO will, of course, be raising this matter with its members throughout the world and will also be urging governments and their agencies to take action in appropriate forums should the Ordinance in fact be suspended. In particular, we will urge that Governments lodge complaints in the World Trade Organization without delay, since we believe that publishers and authors will suffer permanent and serious continuing damage as a result of any precipitate suspension of the Ordinance. Indeed, the losses will be far greater than would have been the case had the Government not introduced the Amending Ordinance at all, since the Government will be seen to have singled out the publishing and reprographic industries as being an industries whose rights and interests may be disregarded and ignored with impunity.

Please, Mr. Chief Executive, do everything necessary to prevent such ill considered, partisan and damaging action by the Legislative Council. Hong Kong's international reputation depends upon it.

Yours sincerely

Stephanie Faulkner
Secretary General