



Panel on Commerce and Industry

Attention: Hon Kenneth TING Woo-shou, JP

Dear Sir

Re: Intellectual Property (Miscellaneous Amendments) Ordinance (the “Amendment Ordinance”)

The Amendment Ordinance took effect from 1 April 2001 and has since then aroused different opinions, confusions and concerns from the public. As a result, it is proposed that some government actions should be taken to clarify the situation. Owing to our business nature, we have to deal with copyright issues on a daily basis, and would like to give our comments on the Amendment Ordinance as follows:

1. Copyright originated as a civil property right to the creators of works. The law of copyright aims at providing a legal framework for the protection of creators of works, such as painters, authors and software developers, and other relevant parties such as investors of the publishing and broadcasting industries, so as to give incentives to people to create and develop. Its spirit is to give the right to copyright owners to manipulate and benefit from their own works. Through protection to these primary beneficiaries, the law of copyright also affects the daily life of members of the public and business, and in that sense attracts much government’s concerns.
2. We understand that many members of the public have confusions about the amended Copyright Ordinance of HKSAR (the “Copyright Ordinance”). However, it seems to us that the confusions may have more to do with the members’ unfamiliarity with the law, both the previous and the amended versions, rather than the law itself. For example, it seems that ever since 1997, the enactment of the Copyright Ordinance, a person will be subject to civil liability by copying a newspaper article and to criminal liability by possessing any infringing copy for the purpose of trade with a view to committing any act infringing the copyright. These liabilities were not newly created by the Amendment Ordinance. However, because of the public’s lack of awareness about the Copyright Ordinance in the past, people have a misconception that they were put under the risk of being sued or prosecuted overnight on 1 April by doing something they habitually do. Therefore, we submit that the problems perhaps did not arise from the substance of the Copyright Ordinance which follows the copyright law of the developed countries in the world, but from the public awareness and misconception. Limiting or amending the copyright law or the right of the copyright



owners may not solve the ultimate problems; the more effective way may be to increase public's respect to copyright and assist copyright owners in establishing licensing schemes.

3. Instead of further amending the Copyright Ordinance or excluding its application to certain activities, we think the government may educate the members of the public in the copyright law, arouse their awareness and encourage copyright owners of the same industry to establish collective licensing scheme. In respect of the education section, the government may provide seminars on to what extent can teachers make copies for the purposes of education. However, we think the government should respect the spirit of law of copyright and the decisions of copyright owners on how their respective works could be used or licensed.
4. Even if the government or the legislators consider that further amendments to the Copyright Ordinance or implementations of compulsory related rules and regulations are appropriate, we believe that the bottom line is: **copyright is vested in creators of works and this right should not be interfered, reduced or impaired by the government or any other regulatory authorities. The copyright owners should have sole and absolute right to determine how their work can be used.** Any interference by the government or the legislative authority with the right of the copyright owners represents a **serious impairment to the individual's personal proprietary right and the image of the HKSAR as a free economy.**
5. HKSAR has a free and developed economy and its legislative regime is comparable to those of the world's most developed countries. Similar copyright law exists in many other countries in the world, and the copyright owners in those countries can self-regulate licensing of their rights without government interference. In the UK, for instance, newspapers may on a voluntary basis join the Newspaper Licensing Agency which collectively licenses the copying of newspapers, and the system works well. We believe that the copyright owners in Hong Kong will, as driven by market demands, develop satisfactory regulations in respect of their works by themselves. The role of the government and the legislators in this area should be advisory rather than regulatory.

In summary, we hope that you would consider bringing forward the following points with the Legislative Council in your discussions:

1. The public's confusions about the current Copyright Ordinance may not have been created by the form and substance of the law. Amending or limiting the



law may not solve the problems.

2. Copyright is a personal proprietary right. Copyright owners shall be entitled to determine how their works can be used, including the methods of licensing and licensing fees, without any restrictions or interference from the government or the legislative authority.
3. Any interference with the rights of the copyright owners by the government or the legislative authority represents a serious impairment to the individual's personal proprietary right and the image of the HKSAR as a free economy.

Yours faithfully

Wisers Information Limited