

Legislative Council Panel on Commerce and Industry

Enforcement Action Taken by the Government since the Commencement of the Intellectual Property (Miscellaneous Amendments) Ordinance 2000

Introduction

This paper reports on measures taken by the Government in implementing the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 (“the Ordinance”), and the enforcement of the Ordinance.

Background

2. In early 1999, the Government consulted the public on additional legislative measures to protect intellectual property. The Intellectual Property (Miscellaneous Amendments) Ordinance 2000 incorporates two of those measures which have public support, and was passed by the Legislative Council in June 2000. After wide publicity, the Ordinance came into effect on 1 April 2001.

3. The Ordinance amends the Copyright Ordinance to strengthen criminal sanction against the use of pirated copyright works in business. Starting from 1 April, any person who knowingly possesses an infringing copy of a copyright work in the course of business will commit a criminal offence. An infringing copy include, for example, pirated computer software, an unauthorized photocopy of a magazine or newspaper article, or an

unauthorized video recording. In addition, the Ordinance also amends the Prevention of Copyright Piracy Ordinance to prohibit any person from bringing video-recording equipment into a place of public entertainment used primarily as a cinema, a theatre or a concert hall without authorization.

Publicity

4. The Government has done a lot of publicity work since last year to prepare for the implementation of the new law. In November last year, the Commissioner of Customs and Excise wrote to more than 42,000 enterprises in Hong Kong to introduce the new law, and to invite their representatives to the large scale seminars held at the end of November. More than 4,000 representatives attended this series of seminars. In December 2000, we compiled a set of detailed materials on frequently asked questions and answers, and distributed it through various means to the public. Since January this year, we arranged daily broadcasting of announcements over TV and radio. In addition, we wrote to 180 business organizations representing different trades in Hong Kong in late January attaching the frequently asked questions and answers, and asked them to distribute the materials to their members. After that, a number of business organizations invited us to attend seminars to introduce the new law. Until the end of March, we have attended nearly 30 seminars. The Department of Intellectual Property also wrote to more than 100,000 enterprises in March introducing the implementation of the new law.

Computer Software

5. The effect of the new law on combating corporate use of pirated computer software is immediate and obvious. In view of the financial difficulties faced by some small and medium enterprises in purchasing additional licensed copies of computer software, a number of business organizations have joined hands to collectively bargain the prices with software owners. Some of these organizations have obtained assistance from the Hong Kong Productivity Council. Given that the demand exceeded supply for some of the software products, it would take a longer time for software owners to provide the products to retailers. After liaison between the Government and the Business Software Alliance (BSA), BSA decided not to lodge criminal complaints to the Customs within the month of April.

Making Copies of Copyright Works for Education Purposes

6. The Copyright Ordinance has already contained appropriate exemptions for educational activities. For example, schools are allowed to make copies of copyright works, to a reasonable extent, for the purpose of instruction without having to seek consent of copyright owners. The current amendments to the Copyright Ordinance do not affect these exemptions at all. The acts of photocopying newspaper articles, extracting some copyright works as teaching materials for uploading onto the Intranet of a school for use within that school, and downloading from the Internet articles and pictures for the purpose of instruction are all exempted under the Copyright Ordinance, provided that such acts are done within a reasonable extent.

7. However, according to the law, if copyright owners have already established licensing schemes for the relevant copyright works, schools must first obtain such licence before making copies of the copyright works. As regards the photocopying of books, the Education Department, the Hong Kong Subsidized Secondary Schools Council, and the Hong Kong Subsidized Primary Schools Council signed a licensing agreement respectively with the Hong Kong Reprographic Rights Licensing Society in April last year. Both government and subsidized schools can make photocopies of books according to the terms of the agreement.

8. To enable the education sector to have a better understanding of the relevant exemptions, the Government has specifically compiled a list of frequently asked questions and answers (see Annex) for reference. The Government will also hold a number of briefing sessions for secondary and primary schools in Hong Kong on 10 and 11 April 2001 to settle the doubts of the principals and the teachers. The briefing for the tertiary education institutions will also be held shortly. We will summarize the questions raised by the education sector at the briefing sessions with a view to providing further detailed guidelines.

Making Copies of Newspapers and Magazines

9. As regards photocopying of newspapers, the Government had already contacted the newspaper industry last year to encourage the industry to set up convenient collective licensing arrangements in view of the implementation

of the new law. We also provided for the industry's reference information on similar overseas arrangements. Given that the relevant licensing arrangements were not yet in place when the Ordinance came to effect, and in view of the concern of the public over the arrangements for obtaining photocopying authorization from newspapers, the Government discussed with the industry on transitional arrangements. To allow sufficient time for and encourage users to seek authorization from newspapers, eleven newspapers (Wen Wei Po, Sing Pao Daily, Economic Times, South China Morning Post, Hong Kong Commercial Daily, HKi-mail, Sing Tao Daily, Ming Pao Daily, Tai Kung Pao, Hong Kong Economic Journal and Hong Kong Daily) agreed not to lodge criminal complaints against infringing acts within the month of April. These newspapers would also publish the contact information to facilitate enterprises to seek individual authorization from them. The Government is liaising with other newspapers to encourage them to join the consensus arrangement, so as to provide convenience for users.

10. In addition, the Government continues to maintain close liaison with the newspaper industry, encouraging them to establish collective licensing mechanism shortly. In fact, such collective licensing mechanism for newspapers exists in the United States, Canada, Australia, and the United Kingdom to provide convenience for users in obtaining licence.

11. As regards photocopying of magazines, users can contact the Hong Kong Reprographic Rights Licensing Society to apply for licence.

Preventing Bootlegging

12. The Government has been broadcasting announcements over TV and radio since January to publicize the provisions of the Ordinance to the public. We also prepared posters and pamphlets for wide distribution (including tourists through the Hong Kong Tourism Board). In addition, the Government has also obtained active assistance from the Hong Kong Theatres' Association in arranging its member theatres to provide storage facilities for audience to store their video recording equipment.

Enforcement of the Ordinance

13. Customs has deployed appropriate resources for implementing the new law. As at 5 April 2001, Customs has received 5 reports affixed with names. Investigations are in progress.

Commerce and Industry Bureau

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Annex

Q 1: Is it an offence to make copies of copyright works in schools for the purposes of instruction?

A 1: The Copyright Ordinance has already contained provisions which allow schools to make copies of copyright works, to a reasonable extent, for the purposes of instruction without having to seek consent of copyright owners. However, such acts must not conflict with the normal exploitation of the work by the copyright owner or unreasonably prejudice the legitimate interests of the copyright owner.

However, if a licence for photocopying of the copyright works through an established licensing scheme is available, schools must first obtain the licence before making copies of the works concerned.

Regarding photocopying of books, the Education Department, the Hong Kong Subsidized Secondary Schools Council and the Hong Kong Subsidized Primary Schools Council has each concluded a licensing agreement with the Hong Kong Reprographic Rights Licensing Society in April last year. This will facilitate both government and subsidized schools photocopying books according to the terms of the agreement.

Q 2: Can schools make photocopies of news articles, fine essays or works of educational value for the discussion and appreciation by students?

A 2: The existing Copyright Ordinance has already provided for flexible treatment of photocopying in schools. Please refer to A1. At present, teachers can make, to a reasonable extent, photocopies of excerpt of news articles and distribute them to students in their classes for the purposes of instruction. This falls within the permitted acts of the Copyright Ordinance.

Q 3: Can some examples be clearly given to explain to schools and define what kinds of photocopying activities are against the law?

A 3 It will be an offence if a school, without the consent of the copyright owner, arranges the photocopying of an entire reference book for students, or compiles the essential parts of five different textbooks available in the market into one bound volume for students' use. Obviously such acts unreasonably prejudice the legitimate interests of the copyright owner.

Q 4: Will the Government conduct checks on schools to combat copyright infringing activities?

A 4: For civil infringement cases, litigation is taken by copyright owners on their own through the court.

If criminal infringement activities are involved, the Customs & Excise Department (C&ED) is responsible for the enforcement. Since it is necessary to identify the copyright owner of the infringing articles and to ascertain whether the making of those articles has been licensed, C&ED will only take enforcement actions upon receiving complaints by identifiable complainants and obtaining the consent for assistance from the copyright owner concerned. The C&ED will not initiate checks on schools.

Q 5 What will be the consequences for a school that breaks the law? Who will be liable?

A 5 If a school is involved in a copyright infringing act, it may be subject to both civil and criminal liability. Depending on the circumstances of the case, the school management (e.g. the principal and supervisor) and the employees of the school (e.g. teachers or other staff) may also be liable.

Q 6: Is it against the law for a teacher or student to make large quantities of copies of reference materials and distribute them among students?

A 6: A teacher or student who, for the purpose of research or private study, makes, to a reasonable extent, copies of a copyright work without authorization will not contravene the law. However, one may not be allowed to copy the whole piece of work and normally not more than one copy will be allowed. Bulk copying may constitute an act of civil

or criminal infringement.

Q 7: Can teachers download articles and pictures, etc from the Internet for the purposes of instruction?

A 7: Yes, if such act is done to a reasonable extent. The Copyright Ordinance has already contained provisions which allow schools to download and makes copies, to a reasonable extent, copyright works for the purposes of instruction without obtaining the consent of the copyright owner. However, such acts must not conflict with the normal exploitation of the works by copyright owners or unreasonably prejudice the legitimate interests of copyright owners.

However, if a licence to download the relevant works is available through an established licensing scheme, schools must obtain the licence before downloading and making copies of the works concerned.

Q 8: If the teaching materials contain extracts of articles in a copyright work, can a teacher upload the materials on the Intranet of the school to facilitate the teaching of other teachers or for students' use?

A 8: Yes, if such act is done to a reasonable extent. The Copyright Ordinance has already contained provisions which allow schools to upload, to a reasonable extent, copyright works for the purposes of instruction without obtaining the consent of copyright owners. However, such acts must not conflict with the normal exploitation of the work by the copyright owner or unreasonably prejudice the legitimate interests of the copyright owner. It must be noted that the materials concerned can only be delivered to the teachers and students of the schools concerned through the Intranet and must not be made available to the public.

However, a licence to upload the relevant works is available through an established scheme, schools must obtain the licence before uploading the works concerned.

Q 9: Can schools make recordings of radio or television programmes for showing to students?

A 9: Yes. The Copyright Ordinance has already contained provisions which allow schools to make recordings of radio or television programmes, to a reasonable extent, for the purposes of instruction without obtaining the consent of copyright owners. However, such acts must not conflict with the normal exploitation of the works by copyright owners or unreasonably prejudice the legitimate interests of copyright owners.

However, if schools can obtain a licence for the relevant program through an established licensing scheme, schools must first obtain the licence before recording and showing the programme.