

10 August 2003

Dear Sir/Madam

**Position Statement and Comments
on Copyright (Amendment) Bill 2003**

We urge the HKSAR Government to strengthen enforcement efforts against piracy of printed copyright works by introducing criminal liability for the illicit reproduction of books, periodicals and other printed works.

An Overview

- We are of the view that **books, periodicals and other printed works should be given the same intellectual property protection as applied to the four categories of copyright works, namely, computer programs, movies, television dramas and musical recordings**, i.e. the criminal liability for using pirated copies of copyright works in business.
- The Government's decision to suspend the law in 2001 was largely due to the public's concern on the criminal liability for photocopying of newspapers. To address this, local newspaper industry has established a comprehensive licensing arrangement for making copies. Given that the publishing industry has already developed a comprehensive and well-proven authorized licensing agreement mechanism, and has set up guidelines for the purposes of education and private study, **we strongly oppose the proposed amendment under the new (amendment) bill to make permanent the suspension arrangements in relation to the imposition of criminal liability for illicit reproduction of books, periodicals and other printed works.**
- We hold the view that the **Government should lift the suspension of criminal liability for infringing copies of books, periodicals and other printed works.** The proposal in Copyright (Amendment) Bill 2003 to make permanent the suspension arrangements would send a wrong message to members of general public and encourage the rampant piracy activities, which would hence significantly threaten the development of intellectual property and creative industries in Hong Kong.

- In view of the enforcement actions on intellectual property protection in developed countries, **making any forms of copyright infringements a criminal offence has been a growing tendency around the globe.** The criminal legislation would help combat copyright infringement more effectively, and thus boosting the development of the local creative and publishing industries. Furthermore, copyright protection would enhance the confidence of overseas investors on Hong Kong's business environment, and enhance Hong Kong's reputation as an international city.

Tightening Control against Copy-shops

- We support the proposed measures to strengthen enforcements against the operations of copy-shops. It is widely known that copy-shop is a main channel for illegal reproduction of books.
- However, we consider that the relevant clauses under the proposed measures should be more specific. Below are our suggestions:

Category of works covered under proposed Section 118C should be broadened (please refer to Section 45 of the Copyright Ordinance). It should apply to “a copyright work as published in any literary, artistic, or dramatic work, or printed musical work”.

“A copying service” as defined in proposed Section 118C should include business located within an educational establishment that offers reprographic copying services.

“Principal work” as mentioned in proposed Section 118C should refer to work for research or private study and non-commercial use.

It appears that it was legal if a person possessed one reprographic copy of the whole copyright work. In fact, Section 38 of the Copyright Ordinance permits fair dealing of a work for the purpose of research or private study only. We therefore, are of the opinion that proposed Section 118C(2) could read as a person commits an offence if, for the purpose of or in the course of a business that includes the providing of a copying service, he possesses 2 or more substantially identical reprographic copies, within fair dealing, of a copyright work as published in any literary, artistic, or dramatic work, or printed musical work, being copies that are infringing copies of the copyright work”.

It appears that a copy-shop would be able to claim this defence if it copied an entire 100-page book appearing in a principal work totaling 550 pages. The result of the formulation in proposed Section 118C(4)(b) could be disastrous for the publishing industry. We therefore, suggest that it could read as follows:

- works as published in any literary, artistic, or dramatic work, or printed musical work constitute not more than 10% of the contents of each of the reprographic copies of the principal work;
- the reprographic copy of a copyright work as published in any literary, artistic, or dramatic work, or printed musical work included in the principal work contains no more than 5% of the copyright work; and

- the reprographic copy of a copyright work as published in any literary, artistic, or dramatic work, or printed musical work included in the principal work is not copied from more than one copyright work.

Licensing Mechanism Already in Place; Public Concerns Have Been Removed; Illegal Copying is Rampant; There is no more Excuse for “Suspension”

- The publishing industry has established a photocopy licensing mechanism with the education sector, businesses, government bodies and copy-shops, which allows photocopying of certain contents of printed materials or books to a reasonable extent for the purposes of education or private study.
- Over the past two years, the newspaper industry has also implemented a well-proven authorization mechanism to dispel public doubt on copying newspaper articles for reference purposes.
- To address the concern of the education sector, the publishing industry has reached an agreement with the sector. The Government then publicized the “Guidelines for Photocopying of Printed Works by Not-for-profit Educational Establishments” in September 2002. The Guidelines are designed to provide distinct guidance for the education sector in relation to the procedures and reasonable extent on photocopying of printed works.
- As clearly stated in Section 38 of the existing Copyright Ordinance, “fair dealing with a work of any description for the purposes of research or private study does not infringe any copyright in the work”. This states very clearly that photocopying to a reasonable extent for the purpose of private study is considered legal.
- Illicit book reproduction in Hong Kong is very rampant. According to a survey conducted by the Hong Kong Reprographic Rights Licensing Society in March-April, 2002, illegal photocopying activities resulted in an annual loss of over HK\$70 million to the tertiary textbook publishing industry.
- In a survey on book reproduction conducted by the Association of American Publishers in September, 2002, some 3,900 tertiary students in Hong Kong were interviewed. About 75% of them admitted that they had used copied textbooks. And nearly half of the respondents said they had never or seldom purchased textbooks.

The publishing industry in Hong Kong is facing a very critical moment at present, and we deem that fighting the control against illegal reproduction of copyright products is a task which brooks no delay.

Yours truly

Hong Kong Music Publisher