

**Hong Kong and
International
Publishers' Alliance
香港及國際出版聯盟**

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Clerk to Bills Committee
Legislative Council Secretariat
3rd Floor Citibank Tower
3 Garden Road
Central
Hong Kong

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 is applied to the Four Categories of copyright works, namely, computer programs, movies, television dramas and musical recordings**, i.e. imposition of 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 about criminal liability for photocopying of newspapers. To address this, the 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.**

Members: Hong Kong Publishing Federation Association of American Publishers, USA
Anglo-Chinese Textbook Publishers Organisation Publishers Association, UK
Hong Kong Educational Publishers Association International Association of Scientific, Technical and Medical
Publishers, Netherlands

- 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 the general public and encourage rampant piracy activities, which would in turn significantly threaten the development of intellectual property and creative industries in Hong Kong.
- **Making any form of copyright infringement a criminal offence has been a growing tendency around the globe.** Criminal legislation would help combat copyright infringement more effectively, thus boosting the development of local creative and publishing industries. Furthermore, copyright protection would enhance the confidence of overseas investors in 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 operation of copy-shops. However, it appears that it was legal under proposed Section 118C(2) if a person possessed one reprographic copy of the whole copyright work. We would like the government to introduce measures to fill up the loophole.
- We also consider that the relevant clauses under the proposed measures should be more specific. Below are our suggestions:

The 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, including any literary, artistic, or dramatic work, or printed musical work".

Section 118C(4) of the Bill would provide a complete defense when the work reproduced by the copy-shop without authorization ("as published in a book, magazine or periodical") is contained in another "principal work" of which the copied work forms 20% or less. We know of no precedent for such a percentage in the Hong Kong Ordinance, although other laws have included percentage allowances for permissible copying (albeit at smaller percentages, generally no more than 10%).¹ However, those other laws apply to the permissible copying of a percentage of a work, not, as in the case of this draft, to the inclusion of a work that is copied in its entirety and included in a "principal work" in which the copied work in question appears. The result of the formulation in this draft could be disastrous for publishers. For example, it appears that a copy-shop would be able to claim this defense if it copied without authorization an entire 100 page book appearing in a compendium totaling 550 pages. We do not believe this is what

¹ See, for example, Sections 10(2) and 10(2A) of the Australian Copyright Act (10 percent of certain works deemed to be "reasonable portion" for purposes of various

limitations and exceptions to exclusive reproduction right).

the drafters intended. A defense may be appropriate where a copy-shop makes copies of a small percentage of the work in question. In this case, Section 118C(4)(b) could read as follows:

the infringement copy included in the principal copyright work contains no more than 10% of the work infringed.

If necessary, some adjustment to this guideline could be considered in the case of very short works, such as newspaper articles. However, Section 38 of the Copyright Ordinance may cover some such cases, as it permits fair dealing of work for the purpose of research or private study (taking into account the purpose and nature of the dealing, the nature of the work, and the amount and substantiality of the portion dealt with in relation to the work as a whole to determine whether a particular use falls within fair dealing).

Licensing Mechanism Already in Place; Public Concerns Have Been Removed; Illegal Copying is Rampant; There is No Reason 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 concerns of the education sector, the publishing industry 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 provide distinct guidance for the education sector in relation to the procedures for, and reasonable extent of, photocopying of printed works.
- 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.

Conclusion

The publishing industry in Hong Kong is facing a very critical moment at present, and we deem that tightening the control against illegal reproduction of copyright products is a task which merits immediate action.

Yours truly

Simon Li
Convenor (Hong Kong)
Steering Committee
(no signature via electronic transmission)