

**Copyright (Amendment) Bill 2003**  
**Summary of views from deputations / individuals**  
(as at 3.7.2003)

Issues	Views / Concerns	Organizations/Individuals
<p>Proposal to make permanent the arrangements under the Copyright (Suspension of Amendments) Ordinance 2001 (the Suspension Ordinance) whereby criminal liability for the use of pirated copies of copyright works in business is confined to four categories of works, namely, computer programs, movies, television dramas and musical recordings</p>	<p>Support the proposal in principle</p> <p>Support the proposal but stress on the need to give assurance that teachers as end users would not be subject to criminal prosecution for possession or using copyright materials in printed form for educational purposes</p> <p>The proposal should be extended to cover other types of copyright works, in particular, books, periodicals and other printed works where infringements are serious. The Administration should take measures to safeguard the interests of the publishers. Some organizations consider that such an extension is in line with the fairness principle and in compliance with the international practices.</p>	<ul style="list-style-type: none"> <li>• Consumer Council</li> <li>• The Chinese General Chamber of Commerce</li> <li>• The Chinese Manufacturers' Association of Hong Kong</li> <li>• Hong Kong Bar Association</li> <li>• Hong Kong Association of Bankers</li> <li>• Vocational Training Council</li> <li>• Federation of Hong Kong Industries</li> <li>• Hong Kong General Chamber of Commerce</li> <li>• Hong Kong Society of Accountants</li>   <li>• HUCOM Inter-Institutional Task Force on Reprographic Rights Licensing</li> <li>• Joint University Librarians Advisory Committee</li>   <li>• Anglo-Chinese Textbook Publishers Organizations</li> <li>• Hong Kong International Publishers' Alliance</li> <li>• Hong Kong Educational Publishers' Association</li> <li>• Hong Kong Publishing Federation Ltd.</li> <li>• Hong Kong Reprographic Rights Licensing Society</li> <li>• McGraw-Hill International Enterprise, Inc.</li> <li>• Pearson Education (parent company of</li> </ul>

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	<p>Support the proposal but consider that the category of work “television drama” should be broadened to cover non-dramatic programmes</p> <p>Suggest that the proposal should be extended to encompass radio programming</p> <p>Consideration should be given by the Administration to improve the civil litigation process rather than to criminalize any act of</p>	<p>Longman Hong Kong Education)</p> <ul style="list-style-type: none"> <li>• Association of American Publishers</li> <li>• Canotta Publishing Co. Ltd</li> <li>• Chung Tai Educational Press</li> <li>• The Commercial Press (HK) Ltd</li> <li>• Hon Wing Book Co. Ltd.</li> <li>• Hong Kong Educational Publishing Co.</li> <li>• Hong Kong Music Publisher</li> <li>• Modern Education Network Ltd</li> <li>• Oxford University Press (China) Ltd</li> <li>• Pilot Publishers Services Ltd</li> <li>• Pilot Publishing Co. Ltd</li> <li>• The Publishers Association</li> <li>• SNC Panpac (HK) Ltd</li> <li>• Witman Publishing Co. (HK) Ltd</li> <li>• Ying Lee Music Co. Ltd</li> <li>• The Australian Chamber of Commerce</li> <li>• International Publishers Association</li> <li>• The Hong Kong Copyright Licensing Association Ltd.</li> <li>• The Newspaper Society of Hong Kong</li> </ul> <ul style="list-style-type: none"> <li>• Asia Television Ltd</li> <li>• Television Broadcasts Ltd</li> </ul> <ul style="list-style-type: none"> <li>• Hong Kong Commercial Broadcasting Co. Ltd</li> </ul> <ul style="list-style-type: none"> <li>• Hong Kong Small and Medium Enterprises Association Ltd.</li> </ul>

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	copyright infringement in relation to the four categories or works	
Proposal to tighten criminal sanctions against illicit copy-shops	<p>Support the proposal in principle</p> <p>Support the proposal but suggest the following amendments to section 118C:</p> <p>(a) the copyright work under the section should be broadened to cover the one published in any literary, artistic, or dramatic work or printed musical work;</p> <p>(b) the term "a copying service" should cover business located within an educational establishment that offers reprographic copying services;</p> <p>(c) the term "principal work" should refer to work for research or private study and non-commercial use.</p> <p>As regards defense against an offence in relation to possession of infringing copies by a copying service, it is suggested that section 118C(4)(b) be further amended to read as follows:</p> <p>(a) works as published in any literary, artistic or dramatic work, or printed musical work</p>	<ul style="list-style-type: none"> <li>• Consumer Council</li> <li>• The Chinese General Chamber of Commerce</li> <li>• The Hong Kong General Chamber of Commerce</li> <li>• Anglo-Chinese Textbook Publishers Organizations</li> <li>• Hong Kong International Publishers' Alliance</li> <li>• Hong Kong Educational Publishers' Association</li> <li>• Hong Kong Publishing Federation Ltd.</li> <li>• Hong Kong Reprographic Rights Licensing Society</li> <li>• McGraw-Hill International Enterprise, Inc.</li> <li>• Pearson Education (parent company of Longman Hong Kong Education)</li> <li>• Canotta Publishing Co. Ltd</li> <li>• Chung Tai Educational Press</li> <li>• The Commercial Press (HK) Ltd</li> <li>• Hon Wing Book Co. Ltd.</li> <li>• Hong Kong Educational Publishing Co.</li> <li>• Hong Kong Music Publisher</li> <li>• Modern Education Network Ltd</li> <li>• Oxford University Press (China) Ltd</li> <li>• Pilot Publishers Services Ltd</li> <li>• Pilot Publishing Co. Ltd</li> <li>• The Publishers Association</li> <li>• SNC Panpac (HK) Ltd</li> <li>• Witman Publishing Co. (HK) Ltd</li> </ul>



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	<p>sanctions against illicit copy-shops. Suggestion to include wordings like "for any other material advantage" to the relevant parts of the Bill.</p> <p>Concern that the burden of proof should be placed with the prosecution side on criminal sanction against illicit copy-shops</p> <p>Concern on the rationale behind the defence against offence in relation to possession of infringing copies by a copying shop</p> <p>Not in support of the proposal given the fact that any copyright infringement should at first instance be dealt with through civil litigation between parties concerned</p>	<ul style="list-style-type: none"> <li>• The Australian Chamber of Commerce</li> <li>• Hong Kong Bar Association</li> <li>• Hong Kong Small and Medium Enterprises Association Ltd</li> </ul>
<p>Removal of the phrase "in connection with" from the expression "for the purpose of, in the course of, or in connection with, any trade or business" where it appears in the Copyright Ordinance (Cap.528)</p>	<p>Support the removal in principle</p> <p>Concern that the phrase "for the purpose of or in the course of a trade or business" may create enforcement difficulty against an offence. For instance, it may cover situation in which business owners possess infringing copy of computer software for a commercial purpose but not necessarily for the purpose of or in the course of the specific trade or business engaged. Likewise, a person may commit an infringing act</p>	<ul style="list-style-type: none"> <li>• Consumer Council</li> <li>• The Chinese General Chamber of Commerce</li> <li>• The Chinese Manufacturers' Association of Hong Kong</li> <li>• Hong Kong Society of Accountants</li> <li>• Business Software Alliance</li> <li>• Asian Patents Attorney Association(Hong Kong Group)</li> </ul>

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	<p>for ulterior motives rather than for profit or financial reward.</p> <p>The phrase is generally considered too broad. Consideration should be given by the Administration to specify explicitly the types of infringing acts that will attract criminal liability.</p> <p>Suggestion for the removal of the whole phrase taking into account its far-reaching consequences on business activities</p>	<ul style="list-style-type: none"> <li>• The Australian Chamber of Commerce</li> <li>• Hong Kong Small and Medium Enterprises Association Ltd</li> </ul>
<p>Provision of a new defense against criminal liability for employees possessing infringing copies of works belonging to the four categories of works supplied by their employers</p>	<p>Support the proposal in principle. The proposed defense is fair and reasonable given the fact that most employees are not in a position to know whether or not the software provided by their employers is an infringing copy.</p> <p>Concern that measures should be taken by the Administration to safeguard against any abuse of the defence.</p> <p>The proposed defense may provide a loophole for decision-makers in business to escape from criminal liability by claiming that there has been in place established asset management practices and delegation of responsibility for acquiring and installing the software for business.</p>	<ul style="list-style-type: none"> <li>• Consumer Council</li> <li>• The Australian Chamber of Commerce</li> <li>• The Chinese General Chamber of Commerce</li> <li>• The Chinese Manufacturers' Association of Hong Kong</li> <li>• Hong Kong Small and Medium Enterprises Association Ltd</li> <li>• The Hong Kong General Chamber of Commerce</li> <li>• Asian Patent Attorneys Association (Hong Kong Group)</li> <li>• Business Software Alliance</li> </ul>
<p>Removal of end-user liability in relation to</p>	<p>Support the proposal in principle</p>	<ul style="list-style-type: none"> <li>• Motion Picture Association</li> </ul>

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parallel imports	<p>Concern that the public performance of a parallel imported work or copy of a film, broadcast, or cable programme should be restricted. Suggestion to set out explicitly the offending acts relating to parallel imports.</p> <p>Support the proposal given the fact that schools /libraries can acquire copyright works for educational and research purposes more easily and promptly and at a affordable price from overseas distributors</p> <p>Support the proposal but has reservation on the Administration's intention to maintain the existing restrictions on parallel importation of copyright works for commercial dealings. Consideration should also be given by the Administration to exempt parallel importers from the presumption of profit or reward under section 118(1) having regard to an offending act of transporting or storing infringing copies of copyright works.</p>	<ul style="list-style-type: none"> <li>• The Chinese General Chamber of Commerce</li> <li>• The Chinese Manufacturers' Association of Hong Kong</li> <li>• Hong Kong Bar Association</li> <li>• Federation of Hong Kong Industries</li> <li>• The Hong Kong General Chamber of Commerce</li>   <li>• Motion Picture Association</li>   <li>• HUCOM Inter-Institutional Task Force on Reprographic Rights Licensing</li> <li>• Joint University Librarians Advisory Committee</li> <li>• Hong Kong Library Association</li> <li>• The Hong Kong Academy of Performing Arts</li>   <li>• Consumer Council</li> </ul>

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	<p>Support the proposal in principle but in favour of a wider scope of liberalization on parallel imports (other than computer software) to facilitate free flow of goods, increase competition and provide more choices for consumers</p> <p>Not in support of the proposal given the fact that it may have negative impact on the business and employment of the local publishing industry</p> <p>Concern on enforcement difficulty in differentiating legitimate parallel imports from pirated copies of copyright works</p>	<ul style="list-style-type: none"> <li>• Hong Kong Society of Accountants</li>   <li>• Association of American Publishers</li> <li>• International Publishers Association</li>   <li>• The Australian Chamber of Commerce</li> <li>• The Chinese General Chamber of Commerce</li> </ul>
Others	<p>Concern that section 118A(5)(b) would inadvertently eliminate the end-user criminal liability for enormous range of computer software available over the Internet, thus diminishing the copyright protection for computer software in Hong Kong</p> <p>As the existing licensing schemes for photocopying of newspapers, books, periodicals and printed materials operate on commercial principle and without sufficient participation from the end-users, there has been grave concern that the need of the educational sector may not be properly addressed. Suggestion for the Administration to develop some guidelines (including those for electronic copying) for compliance by the educational sector for permissible copying.</p>	<ul style="list-style-type: none"> <li>• Business Software Alliance (BSA)</li>   <li>• HUCOM Inter-Institutional Task Force on Reprographic Rights Licensing</li> <li>• Joint University Librarians Advisory Committee</li> <li>• Hong Kong Library Association</li> </ul>



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	<p>Suggestion that the “fair dealing” principle under section 38 of the Copyright Ordinance on permitted acts in relation to copyright works should be expanded to an open “fair use” model adopted by the United States</p> <p>Support the Bill but raise concern on the lack of bargaining power on end-users in negotiating with the operators of various licensing schemes on the fees charged for copying newspaper articles, books, periodicals and printed materials, etc.</p> <p>Concern on the propriety of the expression “distributing for profit or financial reward” under section 118</p> <p>Concern on the need to seek clarification on the defense available to a person engaged in transporting or storing an infringing copy of copyright work under section 118(1)(d) &amp;(e)</p> <p>Concern on the need to seek clarification on defense to criminal liability under section 118 and 118A</p> <p>Concern on the basis of offences in relation to infringing copies of particular categories of works under section 118A</p> <p>Given the popularity of CD-burning devices, measures should be taken by the Administration</p>	<ul style="list-style-type: none"> <li>• HUCOM Inter-Institutional Task Force on Reprographic Rights Licensing</li> <li>• Joint University Librarians Advisory Committee</li> <li>• Hong Kong Library Association</li>   <li>• Hong Kong News Clipping Industry Working Committee</li>   <li>• Law Society of Hong Kong</li>   <li>• Law Society of Hong Kong</li> <li>• Asian Patent Attorney Association (Hong Kong Group)</li>   <li>• Law Society of Hong Kong</li>   <li>• Hong Kong Bar Association</li>   <li>• Motion Picture Association</li> </ul>

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	<p>to combat against reproduction of filmed entertainment in digital format, particularly, by operators offering commercial CD-ROM duplication services.</p> <p>As regards the presumption on offence of transporting or storing infringing copies of copyright works for profit or financial reward, consideration should be given to place the burden of proof on the prosecution side.</p> <p>Concern on the possibility of establishing a licensing mechanism for dealing with the copyright of building designs</p> <p>Suggestion that schools should be allowed to make an one-off payment for photocopying of copyright works</p> <p>As regards the definition of "business", consideration should be given by the Administration to exempt registered charities from the criminal liabilities under the amendments made by the Bill.</p>	<ul style="list-style-type: none"> <li>• The Australian Chamber of Commerce</li> <li>• Hong Kong Society of Accountants</li>   <li>• The Hong Kong Institute of Architects</li>   <li>• a Sai Kung District Council member</li>   <li>• Hong Kong Society of Accountants</li> </ul>

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