

May 10, 2002

Hon. Andrew CHENG Kar-foo
Chairman
Bills Committee on Prevention of Child Pornography Bill
Legislative Council Building
8 Jackson Road
Central, Hong Kong

Re: Prevention of Child Pornography Bill

Dear Chairman Cheng:

Thank you for the your letter dated 18 April 2002 sent on your behalf. We are pleased to respond to your kind invitation to provide views on the above captioned bill.

INTRODUCTION OF MPIA

MPIA is a local film industry association formed in 1986 to represent our members to express their views on issues that have effects on the industry's interest. Our members come from different fields of the industry such as film production, film distribution, post-production, cinema operators, optical discs manufacturing, video distribution etc.

DEFINITION OF CHILD PORNOGRAPHY

We submit that we do not agree on the definition of child pornography: "...that is a pornographic depiction of a person who is or appears to be a child, ...".

Reasons:

1. We firmly believe that the above underlined term "appears to be" will inevitably put every film producers and directors in a difficult and unfair position where they may face *criminal prosecution* even when they are only producing a totally legitimate movie without the intention to promote child pornography. In the world of movie making, it is not unusual for film producers to come across screenplay that involves characters under the age of 16 in sex-related scenes or themes. But the theme and moral of the story could be totally legitimate and the sex-related scenes are included for practical and/or artistic purpose.

We would like to use two examples to illustrate our point:

Example 1:

A screenplay, which intends to explore the theme of the pain, sufferings, and horror of a child rape victim, and there will be rape scene. Even the producer of the film has cast an actress over 16 years of age, he will still be facing a dilemma of how to make the actress not to “appear to be” under 16 years old but at the same time he must be able to convince the audiences that the actress is under 16 so that they would feel for the actress.

Example 2:

“Lolita”, a well-known novel by Vladimir Nabokov (1899-1977), which tells a story about a mid-age professor becomes romantically (and illegally) involved with a 12-year-old teenager, has been adapted into movies twice in 1962 and 1997 respectively. In the 1997 version, an actress named Dominique Swain who was 17 years old at the time played “Lolita”, and Jeremy Irons played the mid-age professor. Even though critics around the world have praised the movie, if the film were produced in Hong Kong, the sex-related scenes in the movie would almost certainly incriminate the producer and the directors under the definition of the proposed legislation.

2. Even though we understand that the purpose of the proposed legislation is to protect children from “all forms of sexual exploitation and sexual abuse”, we believe that the proposed term “appears to be” will lead to unintentional but serious suppression of creativity and arts.
3. Furthermore, the competitiveness of local film industry would suffer substantially because on one hand films produced in Hong Kong have to observe the harsh requirement of the proposed legislation, but on the other hand, foreign films distributors will not be required to ascertain the age of the actors and actresses in the films.

OFFENCES RELATING TO CHILD PORNOGRAPHY AND STATUTORY DEFENCE CLAUSE AVAILABLE

We submit that we have deep concern regarding the proposed offences that “any person who has in his possession any child pornography (unless he is the only person pornographically depicted in the child pornography) commits an offence....”

For the film industry, it is not unusual for film distributors to unknowingly come into possession of a copy of a films or video that may have visual content that is liable for criminal offences under the proposed bill.

In the case of film distribution business, it is common for distributors to receive many

sample tapes from suppliers. The risk for distributors lies in the fact that they have no control over the content in the sample tapes sent to them by suppliers. Although there is a proposed statutory defense that if the defendant can establish that “he had not himself seen the child pornography and did not know, nor did he have any reasonable cause to suspect, it to be child pornography”, it would be difficult for the distributor to prove that he had not seen the child pornography. For example, the distributor had opened the package containing the tape and had only seen the first 30 minutes of it. However, there is child pornographic content in the latter part of the tape, it would be extremely difficult for the distributor to prove he had not seen the illegal content.

Furthermore, in a film distribution operation, the owner of the business is often not the person who inspect the content of sample tapes. If the employee responsible for inspecting sample tapes did not inform the employer about the possible illegal content in the tape either intentionally or unintentionally, the employer could be prosecuted without any statutory defense.

CONCLUSION

This submission is prepared with the objective of striking a balance of interest between the local film industry and the well being of the community in mind. MPIA totally supports the motive of the government to protect children from child pornography, however, we believe the proposed bill could create unnecessary confusion and unfair burden to the legitimate local film industry. We urge the government and the Legislative Council to consider our views and difficulties, and make any necessary amendment needed.

We are pleased to have shared these views with you and look forward to meeting with your colleagues on 17th May.

Sincerely,

Woody Tsung
Chief Executive