

28 February 2002

LegCo Panel on Commerce and Industry
C/o Dr. the Hon. Lo Wing Lok
Present

Dear Dr. Lo,

Review of Certain Provisions of the Copyright Ordinance

On 15 January 2002, we submitted our views on the Government consultation document on the Review of Certain Provisions of copyright Ordinance to the Commerce and Industry Bureau. A copy of our submission is enclosed for your reference.

Apparently, our views, in particularly those on Chapter 4 concerning permitted acts related to free public showing or playing of broadcast or cable program, have not been reflected to the LegCo Panel on Commerce and Industry. We should be most grateful if you would pass them to the Panel for their kind consideration.

In brief, playing free radio or television broadcasts in the waiting area of medical clinics and hospitals should be exempted from paying copyright royalties to owners of underlying work (such as music and lyrics) because such act is mainly for patients waiting there to have access to public information and for the incidental entertainment of patients waiting there who are not expected to pay for it. Besides, when the copyright holders of the underlying works licensed their work to the radio or television network operators, they should have been aware that their work would be accessible to the general public (including doctors, nurses and patients in medical clinics and hospitals) by way of the broadcast or cable program. Levying copyright royalties to clinics and hospitals is tantamount to double "taxation".

Yours sincerely,



Dr. Li Siu Lung
Hon. Secretary

LSL/yl

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15 January 2002

Commerce and Industry Bureau
Level 29, One Pacific Place
88 Queensway
Hong Kong

Attention: Ms. Laura Tsoi,
Assistant Secretary for Commerce & Industry

Dear Ms. Tsoi,

Review of Certain Provisions of Copyright Ordinance

The Hong Kong Medical Association has studied the consultation document on the Review of Certain Provisions of Copyright Ordinance and would like to submit the following views. Please accept our apology for the late submission as it has taken us some time for internal consultation.

Chapter 1: Criminal Provisions related to End-user Privacy

The Ordinance classifies all unauthorized photocopy of a newspaper article, recording of a television news program or electronic copy of an Internet web-page as criminal activity, irrespective of the nature of the “business”. This new end-user criminal liability is indeed too harsh and, as a result, has hampered dissemination of information and classroom teaching. Our Association would support the view that criminal sanction should *not* apply to the possession of an infringing copy of a copyright work in “business” activities of a non-profit-making nature. In fact, we would support that criminal provision should apply only to copyright works afflicted by rampant piracy, and those acts, which do not give the end-user any commercial advantage or private financial gain, should be exempt from criminal liability. We therefore, would support that the phrase “in connection with” in the expression “for the purpose of, in the course of, or in connection with, any trade or business” used in the Copyright Ordinance should be removed. As to whether employees in possession of an infringing copy supplied by the employer for use in business should be criminally liable, it would be prudent to consider each case individually, applying the principle as outline above, not to impose too much hardship on those innocent employees.

Chapter 2: Permitted Acts for Educational Purposes

To have provisions for some permitted acts for educational purpose is obviously not to create obstacles for these acts. However to use undefined expressions like “to a reasonable extent” or “passages” in an ordinance would definitely have

a deterring effect on an average citizen with no legal background. Attempts to define them by legislature would unlikely be helpful to these people. Non-statutory guidelines for different circumstances would be a more rational approach. If a non-statutory approach is to be adopted, it would seem logical to permit the act of recording or copying permissible under sections 44 and 45 of the Copyright Ordinance no matter licences under licensing schemes are available or not.

As to whether a new permitted act should be provided under the Copyright Ordinance to facilitate the uploading of copyright works to a school intranet for access within the school, the test is simply whether legislature helps to alleviate anxiety or has an opposite effect to both teachers and students.

Chapter 3: Permitted Acts for Visually Impaired Persons

A new permitted act provided for the transcribing of works in the printed format into Braille, large-print, talking or other specialized format by non-profit-making bodies for exclusive use of visually impaired persons where no such transcriptions are commercially available in Hong Kong with a reasonable time or at a reasonable price, irrespective of whether a licensing scheme is available or not, would be of great help to those handicapped people. In fact the administration may consider expanding the coverage of this act to include people with other physical or mental disabilities.

Chapter 4: Permitted Acts related to Free Public Showing or Playing of Broadcast or Cable Program

The Council holds the view that when the copyright holders of the underlying works licensed their work to the radio or television network operators, they should have been aware that their work would be accessible to the general public by way of the broadcast or cable program. They should not therefore expect to be paid any royalty for the showing or playing of their works in medical clinics to an audience who has not paid for admission.

Therefore the Hong Kong Medical Association supports that the current exemption of showing or playing in public of a broadcast or cable program (other than an encrypted program) to an audience who has not paid for admission to the place where the broadcast or programs is shown or played, does not infringe any copyright in (a) the broadcast or cable program; or (b) any sound recording or film included in it, or infringe any right in relation to the performance, included in the sound recording or film, should be extended to other underlying works such as music and lyrics of a sound included in the radio program.

We also support that the exemption should be extended to cover all public places where the broadcast or cable program is shown or played except where goods or services are supplied at prices which are substantially attributable to

the facilities afforded for seeing or hearing the broadcast or program.

Chapter 5: Parallel Importation of Copyright Works other than Computer Software

Removing the restrictions on parallel importation for all types of copyright work would be in line with Hong Kong's free-market philosophy, as they will facilitate the free flow of goods. With the development of Internet and e-commerce, the global market has become more integrated and market segregation would become obsolete. It would be appropriate to remove the criminal and civil liabilities of the end-user for using parallel imported copies of a work in business.

Chapter 6: Unauthorized Reception of Subscription Television Programs

No comments.

Chapter 7: Licensing Bodies

As a licensing body may be just an agent representing a group of authors or copyright holders, to register them and to ensure transparency of the royalty charges is consistent with Government's policy objective and public demand. However to replace the current system of adjudicating a license dispute by the Copyright Tribunal with an Arbitration system would not bring down the cost involved; as the major cost is legal representation which might be inevitable no matter which system is being adopted.

In any case, we would like the authority to set up a registration system with a view to regulating these licensing bodies.

Yours sincerely,



Dr. Li Siu Lung
Hon. Secretary

LSL/yl

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