



HK PUBLIC RELATIONS PROFESSIONALS' ASSOCIATION LTD.

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Submission on the Consultation of Review of Certain Provisions of Copyright Ordinance

Submitted by:

Hong Kong Public Relations Professionals' Association

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Introduction

1. The public relations profession is very concerned about the impacts of the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 (the "Amending Ordinance") currently in suspension. The Hong Kong Public Relations Professionals' Association (the "Association") is a professional body that promotes the public relations profession's development and represents the interests of the industry. Since the Amending Ordinance was put into effect earlier this year, the Association has conducted an opinion survey and organized discussion sessions to study the impacts and views of the profession. As a result, a study report was written and published. (Attachment A)

Focus

2. Based on the nature of the profession and views received, this submission will focus on the act of photocopying newspaper articles. It will concentrate on the chapter (Chapter 1) about criminal provisions related to the so called "end-user piracy" issue in the consultation paper on Review of Certain Provisions of Copyright Ordinance (the "Consultancy Paper").

Representation

3. The Association aims at representing public relations professionals in consultancies and in organizations, including both business and non-profit-making operations. Most of these consultancies and organizations provide a wide range of services in the community. Photocopying newspaper articles are often needed incidental to their operations.



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4. Many organizations may require monitoring and circulating newspaper articles as one of the means to help the senior management to learn about the media coverage of their organizations. Much of the coverage stems from interviews and events arranged and organized by the organizations themselves. Also, some public relations consultancies may require photocopying newspaper articles occasionally as part of their professional service for their clients. As the Association understands, however, these consultancies and organizations do purchase newspapers and true copies will be used whenever possible.

Stances

5. In principle, the Association fully supports the spirit of intellectual property rights. At the same time there should also be a fair balance in avoiding imposition of unnecessary restraints on the free flow of information which would bring disproportionate hassles to the community.
6. In general, the Association opposes imposing criminal liability on photocopying news articles for non-commercial use. It believes that imposing criminal liability is grossly unwarranted for the nature of the issue and in terms of public interests. Or else this will simply equate an organization's bona fide acts to such rampant piracy as piracies on software and entertainment products. This development would be most unfortunate and unnecessary if it turns out to be the case.
7. The Association considers that photocopying of newspaper articles in organizations for internal reference and fair use should be allowed and does not carry any criminal liability.
8. As a result, with reference to the specific issues raised by the Consultation Paper, the Association supports that:
 - (a) 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 (Consultancy Paper paragraph 1.11(a)).
 - (b) Employees in possession of an infringing copy supplied by the employer for use in business should NOT be criminally liable; (Consultancy Paper paragraph 1.11(b)).



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- (c) End-user criminal liability should apply only to copyright works afflicted by rampant piracy (Consultancy Paper paragraph 1.11(c)). We do not believe that photocopying newspaper articles should fall within this category.
- (d) Certain acts of the end-user which infringe copyright but which do not give the end-user any commercial advantage or private financial gain, should be exempt from criminal liability (Consultancy Paper paragraph 1.11(d)). We consider that these certain acts should include photocopying newspaper articles for the organizations' internal reference, no matter the organization is a business or non-profit-making operations.
- (e) 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 as amended by the Amending Ordinance should be removed. (Consultancy Paper paragraph 1.11(e)).

Contact Persons:

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End

ATTACHMENT A

PRPA Survey on News Clipping Copying Issue Arising From Intellectual Property Ordinance Amendments – *Survey Report* – September 2001

Introduction

On June 20, 2001, the Legislative Council passed a law to suspend part of the earlier legislative amendments of the Intellectual Property (Miscellaneous Amendments) Ordinance 2000, that makes reproduction of news clipping without authorization, among others, a criminal offence. PRPA conducted this survey as an exploratory study to collect public relations professionals' opinions for reference in deciding its stance.

Research Design

This was a self-administered, structured questionnaire survey. Distribution was made by e-mail or fax to the people on PRPA's contact database of 833 members and non-members.

Survey period

The survey questionnaire attached with a covering letter was sent to all subjects on June 29, 2001. It was sent again on July 10, 2001. The collection period was between June 29 and July 16, 2001.

Results

Response

The total number of responses was 88, which were all valid for inclusion for analysis.

Respondent Profile (Questions 1, 2 & 3)

Question 1

Of all respondents, 62.5% worked in-house in PR department and 37.5 % worked in PR consultancies.

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Question 1A

For those working in in-house PR department, 69.8 % worked in small-group environment with 5 staff or less, 17% with 6-10 staff, 3.8 % with 11-15 staff, 1.9 % with 16-20 staff and 7.5 % with over 21 staff.

Question 2

As regards size of organization, 56% worked in big organization with a workforce of over 100 (93% of whom worked in in-house PR departments and 7% worked in PR consultancies), 9% with a workforce of 51-100, 18% with 21-50, 11% with 11-20, and 6% with less than 10.

Question 3

Most respondents (85.4 %) were of senior management level (37.8 % at director grade or above, 47.6 % at manager grade), the rest (14.6 %) were of middle management level (officer grade).

Impacts of Law on PR department/organization (Question 4)

Question 4

Majority of respondents (64.4 %) normally needed to copy news clippings. About equal proportion of respondents (17.2 % and 14.9 % respectively) responded that either their PR department or the organization needed to copy news clippings, while merely 3.4 % had no such need at all.

Question 4A

Majority of respondents (79.7%) responded that the overall effect of law on PR department/organization was high to very high (56.5% high and 23.2% very high). 18.8% medium, 1.4% low. None responded very low or no effects at all.

Majority of respondents responded that the level of effects in each of the dimensions (workload, workflow, costs and legal liability) as high or very high. The order is as follows: “workflow” (78.2%), “legal liability” (74.0%), “workload” (72.2%) and “costs” (61.1%).

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Issues on Authorization of Organization Copying News Clippings (Questions 5 –10)

Question 5

There was a major split in opinions as regards to whether a news report is a piece of intellectual property or not. 48.1 % of respondents agreed that it was and 38.3 % disagreed.

Question 6

About two-third majority (64.8 %) disagreed that on principle ground, an organization should get authorization for copying news clippings, while only 28.4 % agreed. 6.8 % of respondents were not sure.

Question 7

On practical ground of getting authorization for copying news clippings, most respondents (88.6 %) disagreed, 8% agreed and only 3.4 % were not sure.

Question 8

The order of solutions for authorization issues is as follows:

1. “no authorization in any form is required at all” (34%);
2. “establish certain reasonable exemptions” (29.1 %);
3. “seek a common authorization mechanism” (19.8 %); and
4. “authorization should not be required by law” (12.8 %).

By looking at the above answers, about half of the respondents (47%, answers 1 and 4 together) considered that authorization should not be required by law.

On a further analysis of respondents coming from PR consultancies and in-house PR departments, it was found that only 18% of consultancies respondents choosing Answer C : “establishing exemptions”, much lower than their in-house counterparts which reached 36%, while 27% consultancies respondents chose Answer F : “seeking a common authorization”, much higher than their in-house counterparts of 15%.

Question 9

On the hypothetical situation where authorization was required, all respondents showed certain concerns. With multiple answers allowed, the number of concerns indicated was 3.0 per respondent on average. Concerns recorded were in the following order: “legal liability” (72.7 %); “costs” (71.6 %); “workload” (69.3 %); and “workflow” (69.3 %). 5.6 % mentioned “time or efficiency”, 2.3 % on “free flow of information”, and 5.6 % on “others”.

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Question 10

20.5 % of respondents provided additional opinions on the issue:

1. Two respondents commented on the current process. One suggested to set up a website to facilitate discussion, and the other said the Government should make everything clear.
2. The rest of the respondents provided comments on the stance to take. About two-thirds of commented that news clipping was not an intellectual property per se and/or no authorization should be required for copying. Rationales behind were: (a) news are public asset or public information, requiring authorization for copying may affect free flow of information;
(b) news clipping should not have copyright protection, because news is not creation. No jeopardy is incurred on publishers or other parties, and often no payment is made for securing news' exclusivity. Two respondents compared this with quoting academic references, which is already a way to respect for intellectual property rights. One respondent, however, considers it fair to levy charge for assessing news archives.
3. One-third of respondents mentioned qualifiers, limitations or exemptions for authorization. They included exemptions for reasonable usage, internal sharing purpose and not-for-profit organizations. Two respondents suggested the need for centralized authorization. It was also mentioned that processing time should be quick and costs should be reasonable.

Issues for Discussion

Are news intellectual properties?

Results of the survey show a major split in opinions among PR professionals on this issue. Understanding that a clear, authoritative definition has to be sought and that there should be a thorough discussion which finally leads to a common understanding on the definition, it is not surprising to see split answers to this issue. At this point, it is natural for some practitioners to think and have the opinions that news are defined as intellectual property items when legal amendments already covered this aspect. There is a need for the Government and Legislative Council to provide clarification on this issue.

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Should authorization be needed for reproduction of news clipping?

Results of the survey showed also a substantive majority of PR professionals opposing the need for authorization on both principle and practical grounds. In principle, the concern behind is whether a piece of news should be defined as an intellectual property item and if it is, will it impact on the free flow of information in the society? On practical ground, authorization definitely will raise concerns and bring great impacts on workload, workflow, costs, legal liability and efficiency.

What is the best solution forward?

Given the strong concerns reflected in the results of the survey, most PR professionals consider the best solution as simply requiring no authorization. Many suggest establishing exemptions to avoid creating hardship to fair usage or exemptions be given to certain organizations. If this solution is pursued in future, the scope of exemptions certainly needs to be explored. Some people favor a common authorization mechanism. However, it seems that this is the only one suggestion which exists currently. Whether this is acceptable to all parties needs to be studied and discussed. In any case, both exemption and common authorization mechanisms were only conceptual ideas rather than concrete proposals at this stage. Hence, more solutions may be revealed when further discussion and proposals are developed.

Conclusion and PRPA's Stances

PRPA is a professional body made up of public relations practitioners in Hong Kong. Its members come from corporate PR departments as well as local and international PR consultancies. PRPA understands that the news clipping issue arising from Intellectual Property Ordinance Amendments has raised great concerns from the industry and its practitioners and has been working on collection of opinions from and seeking consultation with industry professionals. The survey which was done in June but was only one of the several efforts which PRPA had done in the past months. PRPA will continue to closely monitor the issue and reflect the opinions of the PR industry to the authority concerned. It is the wish of the Association that the final amendment of the law will work to the benefits of the PR industry as well as the society at large.

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With the views and opinions collected so far, PRPA would like to state its stances on this issue:

1. PRPA supports the protection of intellectual property rights in Hong Kong and supports the Government in fighting against any actions on infringement of intellectual properties.
2. PRPA urges the Government and the Legislative Council to clarify the related issues on, including but not limiting to, the legal and policy basis of covering news clipping within the realms of intellectual property, and the latest international practices in relation to reproduction of news clippings.
3. Copying of news clippings is the focus of concern of the PR industry in this issue. PRPA is very concerned that the act of reproduction of news clippings is defined as a criminal offence. PRPA believes that it will create adverse effects on the free flow of information, unfairness to people and organizations making copies for fair usage, as well as great impacts on operations of organizations.
4. PRPA has strong reservations on authorization requirements for news clippings.
5. PRPA will continue to consult legal opinions and collect information as regards international practices which we consider are vital in arriving at a fair, just and reasonable solution in the best interests of the society.

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ATTACHMENT A

Appendix 1: Survey Questionnaire and Overall Results

**PRPA Survey on News Clipping Copying Issues
Arising From Intellectual Property Ordinance Amendments**

* To answer, please copy “ paste it in-between and your answer, e.g. b) √ (your answer)

Please return by email (hkprpa@hotmail.com) or fax (2816-0877) by July 13

QUESTIONNAIRE

Totally 88 Responses

Respondent Particulars

1. What is the form of PR service you are providing?

- a) Free-lancer **0%** b) PR agency **38%** c) In-house PR **63%**
 d) Others (please specify): _____

(Jump to Q1A)

For Q1 = c) only:

1A. What is the size of your PR department? (N=53)

- a) <5 **70%** b) 6-10 **17%**
 c) 11-15 **4%** d) 16-20 **2%** e) >21 **8%**

2. What is the size of your organization's workforce?

- a) <10 **6%** b) 11-20 **11%**
 c) 21-50 **18%** d) 51-100 **9%** e) >100 **56%**

3. What is the title of your position in the organization?

- a) Director or above **38%** b) Manager **48%**
 c) Officer **15%**
 d) Others (please specify): _____

Impacts on Your PR Department and Organization

4. Does your PR department or organization normally need to copy news clippings?

- a) My PR department does only **17%**
 b) The organization does only **15%**
 c) My PR department and the organization do **64%**
 d) Neither my PR department or the organization does **3%**

(Jump to Q5)

For Q4 = a, b, c only: please reply Q4A1 to Q4A6 AS IF copying news clipping needs authorization:

4A. Which scores below can best represent the effects on your PR department or organization?

	N=	No effect	Very low	Low	Medium	High	Very high
4A1. Workload:	79	a) <input type="checkbox"/> 0	b) <input type="checkbox"/> 2.5%	c) <input type="checkbox"/> 3.8%	d) <input type="checkbox"/> 21.5%	e) <input type="checkbox"/> 41.8%	f) <input type="checkbox"/> 30.4%
4A2. Workflow:	78	a) <input type="checkbox"/> 0	b) <input type="checkbox"/> 1.3%	c) <input type="checkbox"/> 3.8%	d) <input type="checkbox"/> 16.7%	e) <input type="checkbox"/> 51.3%	f) <input type="checkbox"/> 26.9%
4A3. Costs:	77	a) <input type="checkbox"/> 0	b) <input type="checkbox"/> 3.9%	c) <input type="checkbox"/> 9.1%	d) <input type="checkbox"/> 26.0%	e) <input type="checkbox"/> 33.8%	f) <input type="checkbox"/> 27.3%
4A4. Legal liability:	73	a) <input type="checkbox"/> 2.7%	b) <input type="checkbox"/> 2.7%	c) <input type="checkbox"/> 4.1%	d) <input type="checkbox"/> 16.4%	e) <input type="checkbox"/> 35.6%	f) <input type="checkbox"/> 38.4%
4A5. Others (pls specify):	8	a) <input type="checkbox"/> 0	b) <input type="checkbox"/> 0	c) <input type="checkbox"/> 0	d) <input type="checkbox"/> 0	e) <input type="checkbox"/> 50.0%	f) <input type="checkbox"/> 50.0%
4A6. Overall:	69	a) <input type="checkbox"/> 0%	b) <input type="checkbox"/> 0%	c) <input type="checkbox"/> 1.4%	d) <input type="checkbox"/> 18.8%	e) <input type="checkbox"/> 56.5%	f) <input type="checkbox"/> 23.2%

(Jump to Q5)

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(For Q5-Q8, answers in () refers to respondents from Agency/In-house respectively)

Authorization Issues of Organizations Copying News Clipping

5. Do you agree or not a news report is a piece of intellectual property?

- a) Agree **48% (48/48)**
- b) Not agree **38% (38/39)**
- c) Not sure **14% (14/14)**

6. On **PRINCIPLE** ground, do you agree or not organizations copying news clipping should get authorization?

- a) Agree **28% (24/31)**
- b) Not agree **65% (67/64)**
- c) Not sure **7% (9/6)**

7. On **PRACTICAL** ground, do you agree or not organizations copying news clipping should get authorization?

- a) Agree **8% (9/7)**
- b) Not agree **89% (88/89)**
- c) Not sure **3% (3/4)**

8. Which is the **BEST** solution on authorization issues for organizations copying news clipping? (1 answer only)

- a) No authorization in any form is required at all **34% (36/32)**
- b) Authorization should not be required by law **13% (15/11)**
- c) Establish certain reasonable exemptions **29% (18/36)**
- d) It should be a civil liability, not a criminal offence **4% (3/4)**
- e) Each should seek authorization on its own **0% (0/0)**
- f) Should seek a common authorization mechanism **20% (27/15)**
- g) Others (please specify) **1%** _____

9. **IF** authorization is required for organizations copying news clipping, what is your concern(s), if any? (can have more than 1 answer)

Out of the 87 respondents who have indicated at least 1 answer here

- a) No concern **0%**
- b) Workload **69%**
- c) Work flow **69%**
- d) Costs **72%**
- e) Legal liability **73%**
- Time/Efficiency: **5%**
- Free flow of information **2%**
- f) Others (please specify) **6%** _____

10. Do you have any other opinion or suggestion about the issue? If yes, please specify:

(21% respondents have given opinions)

~ End ~

Thank you for your kind cooperation

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The data or information collected will be kept confidential and reported only on an aggregate basis.

The respondent's identity will not be in any way associated with his or her responses.