

LEGISLATIVE COUNCIL BRIEF

PREVENTION OF COPYRIGHT PIRACY ORDINANCE (Cap. 544)

PREVENTION OF COPYRIGHT PIRACY ORDINANCE (AMENDMENT OF SCHEDULE 1) ORDER 2002

INTRODUCTION

This brief explains the Prevention of Copyright Piracy Ordinance (Amendment of Schedule 1) Order 2002 (“the Order”) at Annex A, which establishes a requirement for manufacturers of stampers in Hong Kong to obtain a licence.

BACKGROUND AND ARGUMENT

2. Stampers are a special type of optical disc and are used as master discs for the mass production of common optical discs. Stampers are an essential tool for the illegal production of optical discs containing pirated copyright works such as computer software, music and films. For this reason, there are stringent legal provisions for regulating stampers.

3. Under section 118(4) of the Copyright Ordinance (Cap. 528), any person who makes, imports, exports, possesses or sells a stamper for making infringing copies of a copyright work for sale commits a criminal offence. The maximum penalty is a fine of \$500,000 and eight years’ imprisonment.

4. In addition, under Schedule 2 of the Import and Export (General) Regulations (Cap. 60A), the import and export of equipment for the production of a stamper require a licence. The maximum penalty for contravening the regulation is a fine of \$2 million and seven years’ imprisonment.

5. The relevant provisions in the above-mentioned legislation are at Annex B.

Manufacturing of stampers in Hong Kong

6. To strengthen our efforts to combat copyright piracy, we introduced the Prevention of Copyright Piracy Ordinance (“the Ordinance”) in 1998 to regulate the manufacturing of optical discs in Hong Kong. Under sections 3

and 4 of the Ordinance, a person must obtain a licence for manufacturing optical discs in Hong Kong at the premises specified in the licence. In addition, all optical discs produced must be permanently marked with a code unique to each licensed manufacturer. Officers of Customs and Excise Department ("C&ED") are empowered to inspect licensed premises. The maximum penalty for manufacturing optical discs in Hong Kong without a licence is a fine of \$1 million and four years' imprisonment. As of 8 April 2002, there are 73 such licences in force.

7. The existing licensing scheme applies only to the mass production of optical discs, but **not** the intermediary process of producing stampers. This is because when the licensing scheme was introduced in 1998, stampers were either made at the same premises as the manufacturing of the end product, or imported.

8. However, the situation has now changed. According to the record of C&ED, there are 10 licensed optical disc factories with stamper-production facilities in their premises, and an estimated 10 companies which are engaged solely in making stampers.

9. The number of infringing stampers seized by C&ED in each of the past five years is as follows -

| Year | 1997 | 1998 | 1999 | 2000 | 2001 |
|-----------------------------------|------|------|------|------|------|
| No. of infringing stampers seized | 638 | 8393 | 3148 | 2357 | 381 |

In addition, there have been a number of cases overseas where the infringing stampers seized were produced in Hong Kong.

Proposal

10. In view of the above, we propose to license the manufacturing of stampers in Hong Kong under the Ordinance, in the same way as for other optical discs. Under the proposed licensing scheme, each stamper must bear a manufacturer's code. C&ED officers will be empowered to inspect any licensed stamper-manufacturing premises.

11. We propose to set the licence fee for manufacturing stampers at the same rate as that for other optical discs, i.e. \$5,500 for a fresh licence valid for three years and \$1,270 for renewal. For licensed optical disc factories with stamper-making facilities within the same premises, they may apply for an amendment to their current licence at no additional charge.

12. In consultation with the industry, C&ED has estimated that a three-month lead time will be needed for the industry to prepare for complying with the proposed licensing scheme. We therefore propose to bring the scheme into effect in July 2002.

Impact on Industry

13. According to a survey of C&ED, five stamper manufacturers will need to modify their existing equipment to meet the coding requirement at a cost of between \$5,000 to \$40,000. The proposed licence fee of \$5,500 should not be a burden as it will constitute a very small portion of the total operating cost of the manufacturer.

THE ORDER

14. The Order amends Schedule 1 to the Ordinance by adding "stamper" to the list of "optical disc". The Order will commence on 19 July 2002.

PUBLIC CONSULTATION

15. The LegCo Panel on Commerce and Industry supports the proposed licensing scheme. C&ED has consulted the stamper-manufacturing industry and has addressed their concerns by suitably amending relevant detailed licensing conditions. C&ED has also provided assistance to some manufacturers to meet the coding requirement.

BASIC LAW IMPLICATIONS

16. The Department of Justice advises that the Order does not conflict with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

17. The Department of Justice advises that the Order is consistent with the human rights provisions of the Basic Law.

BINDING EFFECT OF THE ORDER

18. The Department of Justice advises that the Order will not affect the current binding effect of the Ordinance.

FINANCIAL AND STAFFING IMPLICATIONS

19. C&ED will absorb the additional workload within its existing resources. The licensing scheme will generate revenue of about \$55,000 from licence fees in the first year of implementation.

ECONOMIC IMPLICATIONS

20. The proposed licensing scheme will reinforce the protection of intellectual property rights in Hong Kong. It will not have any significant impact on the operating cost of stamper manufacturers.

LEGISLATIVE TIMETABLE

21. The Order will be gazetted on 19 April 2002 and tabled at the Legislative Council on 24 April 2002.

PUBLICITY

22. We will issue a press release. A spokesman will be available to answer media and public enquiries.

23. C&ED will inform the stamper manufacturers.

ENQUIRIES

24. For enquiries on this brief, please contact Mr. Philip Chan of the Commerce and Industry Bureau at 2918 7480.

Commerce and Industry Bureau
April 2002

**PREVENTION OF COPYRIGHT PIRACY ORDINANCE
(AMENDMENT OF SCHEDULE 1) ORDER 2002**

(Made under section 39 of the Prevention of
Copyright Piracy Ordinance (Cap. 544))

1. Commencement

This Order shall come into operation on 19 July 2002.

2. Optical discs

Schedule 1 to the Prevention of Copyright Piracy Ordinance (Cap. 544) is amended by adding -

"11. Stamper."



Secretary for Commerce and Industry

15 April 2002

Explanatory Note

This Order amends Schedule 1 to the Prevention of Copyright Piracy Ordinance (Cap. 544) by adding "Stamper" to the list of "Optical discs". As a result, a licence under the Ordinance will be required for its manufacture.

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|----------|-----|----------|--|--------------------|--------------------|
| Chapter: | 528 | Title: | COPYRIGHT ORDINANCE | Gazette Number: | L.N. 46 of 2001 |
| Section: | 118 | Heading: | Criminal liability for making or dealing with infringing articles, etc. | Version Date: | 01/04/2001 |

Expanded Cross Reference:
115, 116, 117

Remarks:

The Copyright (Suspension of Amendments) Ordinance (Cap 568) provides for the suspension of the operation of certain amendments in relation to this section effected by the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 (64 of 2000).

Offences

- (1) A person commits an offence if he, without the licence of the copyright owner-
- (a) makes for sale or hire;
 - (b) imports into Hong Kong otherwise than for his private and domestic use;
 - (c) exports from Hong Kong otherwise than for his private and domestic use;
 - (d) possesses for the purpose of, in the course of, or in connection with, any trade or business with a view to committing any act infringing the copyright; (Amended 64 of 2000 s. 7)
 - (e) for the purpose of, in the course of, or in connection with, any trade or business- (Amended 64 of 2000 s. 7)
 - (i) sells or lets for hire;
 - (ii) offers or exposes for sale or hire;
 - (iii) exhibits in public; or
 - (iv) distributes; or
 - (f) distributes (otherwise than for the purpose of, in the course of, or in connection with, any trade or business) to such an extent as to affect prejudicially the owner of the copyright, (Amended 64 of 2000 s. 7)
- an infringing copy of a copyright work.
- (2) Subsections (1)(b) and (c) and (4)(b) and (c) do not apply to an article in transit.
- (3) It is a defence for the person charged with an offence under subsection (1), to prove that he did not know and had no reason to believe that the copy in question was an infringing copy of the copyright work.
- (4) A person commits an offence if he-
- (a) makes;
 - (b) imports into Hong Kong;
 - (c) exports from Hong Kong;
 - (d) possesses; or
 - (e) sells or lets for hire, or offers or exposes for sale or hire,
- an article specifically designed or adapted for making copies of a particular copyright work which

article is used or intended to be used to make infringing copies of the copyright work for sale or hire or for use for the purpose of, in the course of, or in connection with, any trade or business. (Amended 64 of 2000 s. 7)

(5) It is a defence for the person charged with an offence under subsection (4) to prove that he did not know and had no reason to believe that the article was used or was intended to be used to make the infringing copies for sale or hire or for use for the purpose of, in the course of, or in connection with, any trade or business. (Amended 64 of 2000 s. 7)

(6) For the purpose of subsections (1)(b) and (3), where a person is charged with an offence under subsection (1) in respect of a copy of a copyright work which is an infringing copy by virtue only of section 35(3) and not being excluded under section 35(4), if he proves that-

(a) he had made reasonable enquiries sufficient to satisfy himself that the copy in question was not an infringing copy of the work;

(b) he had reasonable grounds to be satisfied in the circumstances of the case that the copy was not an infringing copy;

(c) there were no other circumstances which would have led him reasonably to suspect that the copy was an infringing copy,

he has proved that he had no reason to believe that the copy in question was an infringing copy of the copyright work.

(7) In determining whether the person charged has proved under subsection (6) that he had no reason to believe that the copy in question was an infringing copy of the work, the court may have regard to, including but not limited to, the following-

(a) whether he had made enquiries with a relevant trade body in respect of that category of work;

(b) whether he had given any notice drawing attention of the copyright owner or exclusive licensee to his interest to import and to sell the copy of the work;

(c) whether he had complied with any code of practice that may exist in respect of the supply of that category of work;

(d) whether the response, if any, to those enquiries made by the defendant was reasonable and timely;

(e) whether he was provided with the name, address and contact details of the copyright owner or exclusive licensee (as the case may be);

(f) whether he was provided with the date of first day of publication of the work;

(g) whether he was provided with proof of any relevant exclusive licence.

(8) A person commits an offence if he has in his possession an article knowing or having reason to believe that it is used or is intended to be used to make infringing copies of any copyright work for sale or hire or for use for the purpose of, in the course of, or in connection with, any trade or business. (Amended 64 of 2000 s. 7)

(8A) It is immaterial for the purpose of subsections (1)(d) and (e), (4) and (8) whether or not the trade or business consists of dealing in infringing copies of copyright works. (Added 64 of 2000 s. 7)

(9) Sections 115 to 117 (presumptions as to various matters connected with copyright) do not apply to proceedings for an offence under this section. <* Note - Exp. X-Ref.: Sections 115, 116, 117 *>

[cf. 1988 c. 48 s. 107 U.K.]

Chapter: 60A Title: IMPORT AND EXPORT
(GENERAL)
REGULATIONS Gazette Number: 29 of 2000
Schedule: 2 Heading: Version Date: 26/05/2000

[regulations 4, 5, 6, 6AA & 7
(29 of 2000 s. 2)]

PART I

| Item | Article | Country or place |
|------|--|------------------|
| 1. | Textiles. | All countries. |
| 2. | Pesticides. | All countries. |
| 3. | Pharmaceutical products and medicines as defined by section 2 of the Pharmacy and Poisons Ordinance (Cap 138). | All countries. |
| 4-5. | (Repealed L.N. 246 of 1997) | |

PART II

| Item | Article | Country or place |
|------|--|--|
| 1. | Left hand drive vehicles. | All countries. |
| 2. | Outboard engines exceeding 111.9 kilowatts (150 horsepower). | All countries. |
| 3. | Optical disc mastering and replication equipment. | All places outside Hong Kong. (L.N. 529 of 1997) (L.N. 136 of 1994) |

Chapter: 544 Title: PREVENTION OF COPYRIGHT PIRACY ORDINANCE Gazette Number: L.N. 46 of 2001
Section: 3 Heading: Licence to manufacture optical discs Version Date: 01/04/2001

PART II

MANUFACTURING OF OPTICAL DISCS

Licences to manufacture

(Replaced 64 of 2000 s. 21)

- (1) No person shall manufacture optical discs in Hong Kong unless he holds a valid licence.
- (2) Subsection (1) does not apply-
 - (a) to an employee of a licensee who manufactures optical discs in the course of his employment; or
 - (b) to the manufacture of optical discs for a purpose prescribed by the regulations.

▼

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|----------|-----|----------|--|--------------------|---------------------|
| Chapter: | 544 | Title: | PREVENTION OF COPYRIGHT PIRACY ORDINANCE | Gazette Number: | L.N. 235 of 1998 |
| Section: | 4 | Heading: | Prohibition on manufacturing at unlicensed premises | Version Date: | 29/05/1998 |

(1) No licensee shall manufacture optical discs in any place in Hong Kong other than a licensed premises.

(2) Subsection (1) does not apply to the manufacture of optical discs for a purpose prescribed by the regulations.

▼
Chapter: 544 Title: PREVENTION OF GAZETTE L.N. 235 of
COPYRIGHT PIRACY 1998
ORDINANCE
Schedule: 1 Heading: OPTICAL DISCS Version Date: 29/05/1998

[sections 2 & 39

1. CD (compact disc).
2. CD-ROM (compact disc-read only memory).
3. CD-R (compact disc-recordable).
4. CD-RW (compact disc-rewritable).
5. CD-W (compact disc-writable).
6. DVD (digital video disc).
7. DVD-ROM (digital video disc-read only memory).
8. LD (laserdisc).
9. MD (mini-disc).
10. VCD (video compact disc).