

**Legislative Council Subcommittee on the  
draft Criminal Jurisdiction Ordinance  
(Amendment of Section 2(2)) Order 2002**

**Purpose**

In its submission of 11 November 2003 to the Subcommittee, the Law Society of Hong Kong raised several issues related to juvenile offenders, seizure of computers and return of seized computer hardware. While these are not directly directed to the draft Criminal Jurisdiction Ordinance (Amendment of Section 2(2)) Order 2002, we provide our comments on them in the following paragraphs.

**Juvenile offenders**

2. Section 2 of the United Kingdom Computer Misuse Act 1990 renders the section applicable to sentences fixed by law, or where a person of or over 21 years of age may be sentenced to imprisonment for five years. However, we note that this section is not applicable to the more general offence of unauthorized access to computer material set out in section 1 of the same legislation. Since 1990, computer offences have increased considerably, and the consequences of these offences are not dependent upon whether they were committed by adults or juveniles. In addition, proceedings against juvenile offenders are covered by the Juvenile Offenders Ordinance (Cap. 226). The sentences to be imposed by the court should already reflect the age and culpability of these offenders.

**Seizure of computers**

3. The guiding principle is that only materials likely to be of value to the investigation of an offence will be subject to seizure. The court must, therefore, be satisfied that there is reasonable cause to suspect that the materials concerned are likely to be so before issuing a search warrant authorizing seizure of the materials (including computers). The warrant may be in specific or general terms, after the court has taken into account all relevant factors.

## **Return of seized computer hardware**

4. Section 102 of the Criminal Procedure Ordinance (Cap. 221) already provides the court with specific powers to deal with property (including computer hardware) which has come into the possession of the Police or the Customs and Excise Service in connection with an offence. The court can make orders for the disposal of the property concerned, including returning it to the owner.

5. Section 84 of Cap. 221 provides that where a person is convicted of an offence, any property (including computer hardware) found in the possession of that person or the possession of any person for him, may be ordered by the court to be delivered to the person who appears to be entitled to it.

6. In line with the norm in all common law jurisdictions, where property (including computer hardware) is seized unlawfully, civil remedies are available under common law.

Security Bureau  
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