

**VIEWS OF THE HONG KONG COMICS FEDERATION
ON THE PUBLIC CONSULTATION PAPER:
REVIEW OF CERTAIN PROVISIONS OF THE COPYRIGHT ORDINANCE
(December 2004)**

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for the Hong Kong Comics Federation

FOREWORD

1. Our Federation was established in 1999 with the following objective:-
 - (a) to unite the comic industry
 - (b) to develop a comic culture
 - (c) to promote comic to the general public
 - (d) to identify, encourage and nourish talents for the industry
 - (e) to facilitate communication and exchange of comic ideas & culture with other comic organizations and artists all over the world.
2. Our members comprise the largest comic publishers in Hong Kong, including (in alphabetical order) Cboy Comics Ltd, Colour Comic Production Co, Culturecom Ltd, HK Ching Win Publishing Co Ltd, I-Animation Ltd, In Express Media Ltd, Jade Dynasty Publications Limited, Jonesky Limited, Kwong's Creation Co. Ltd, Player Online Ltd, Rightman Publishing Ltd, Tong Li Publishing Group Ltd and Tung Tak Enterprise Ltd.
3. Since the summer of 1999, we have been the co-organiser of the very successful annual Hong Kong Comics Festival at the Hong Kong Convention and Exhibition Centre.
4. Due to the limited time we have in preparing this submission, we have not been able to obtain all the information from our members. Yet, the 5 members, namely Culturecom, Jade Dynasty, Jonesky, Rightman and Tong Li, which formed the Anti-Piracy Group within the Federation, have provided their data. Together, they represent 90% of the market share for Japanese comics and 70% of the market share for local comics in Hong Kong. The information they provided are from 1999 – 2003 which show:-
 - (a) the total income of these 5 companies from sale of comic books and other income such as licensing;
 - (b) their total income from sale of both local comics and Chinese versions of overseas comics;
 - (c) the number of titles (including new and re-published volumes) published;
 - (d) the number of new titles (include only new volumes) published.
5. Tables showing the information are annexed to this submission. It will be noted that there has been a significant drop in the income in 2003 which, we submit, has been due to the accumulated impact of piracy, parallel import and rental of our comics. It will be observed that we have to increase the number of titles we published to boost our sales. Yet, notwithstanding the increase in titles, our income from comics has dropped.
6. We wish to point out that besides the publication of comics, our comics industry also creates opportunities for character merchandises, such as toys, stationery, computer

games and novelty items. In addition, popular titles inspire the development and creation of television cartoons and feature films based on the stories and characters we created. Famous examples include US Superman and Spiderman, Japan Dragonball and Pokemon and our own 風雲 and 中華英雄.

7. To us, the most important incentive is a proper recognition of and return to our investment. This is only possible if our creativity is protected by a comprehensive regime of intellectual property laws, particularly copyright.
8. We will list out our views on all the topics of the Copyright Consultative Paper in the Executive Summary below. On some of the topics, we wish to elaborate our views as follows.

PARALLEL IMPORT

9. Currently, the problem of parallel import is more apparent with Chinese adaptations of Japanese (and other overseas) comics (hereinafter “Chinese Japanese Comics”). Besides local comic production, a substantial part of our business comes from publication of licensed comics, particularly those from Japan. Amongst the 5 publishers mentioned in Paragraph 4 above, which provided financial data of their operations, the sale of Chinese Japanese Comics accounts for over 50% of their income from sale of comics in Hong Kong.
10. The Japanese publishers typically grant licences after their local publication and not simultaneously. Sometimes the time difference could be from six to over twelve months. Licences are often granted to different publishers in Hong Kong, Taiwan and the PRC. For the PRC, the licence is for simplified characters and for Hong Kong and Taiwan, traditional characters.
11. Due to the differences in the size of the markets, purchasing power, quality of printing and sometimes exchange rate fluctuation, there is a price difference between Hong Kong, Taiwan and PRC versions. According to our information, the average price of a volume of a Chinese Japanese Comic:-
 - (a) printed and sold in Hong Kong is HK\$28
 - (b) printed and sold in Taiwan is NT\$85 (~HK\$21.25)
 - (c) printed and sold in the PRC is RMB6.90 (~HK\$6.50)

Typically, the Hong Kong version is about 30% more expensive than the Taiwan version and the Hong Kong version is more than 4 times the price of the PRC version.

12. We are already suffering significant impact of parallel imports from Taiwan. As can be seen from the information above, the typical price difference between a Hong Kong and Taiwan version is about 30%. This already provides sufficient incentive to traders to import Taiwanese versions, particularly since both versions use traditional Chinese characters.
13. Lately, as the PRC market opens up for comics, the impact of parallel import on us is aggravated by the PRC versions, the consequences of which are devastating to our members, especially those whose principal business is in the publication of translated versions of overseas titles in Hong Kong. This is so notwithstanding the fact that the PRC versions use simplified characters and the preferred characters in Hong Kong is still the traditional characters. This is because for comics, the visual

aspect, ie. the artistic works, are of prime importance, whereas the literary narrative is only ancillary. Hence, the fact that such narrative is in simplified character is little, if not no, deterrence to readers particularly since more and more Hong Kong people can now decipher simplified characters.

14. Hence, if there should be a complete liberalisation of parallel imports of comic books, some of our members will go under and for most, there will also be a drastic cut in income. We already have difficulties in competing with Taiwan versions on pricing and there is no way we can compete with importers of PRC versions and PRC publishers on pricing. Therefore, we cannot accept liberalisation of parallel imports for comic books.
15. We also wish to point out that pirated copies often disguise themselves as parallel imports. The liberalisation of parallel imports will further encourage this making enforcement even more difficult for us.
16. We believe other local book publishers, particularly Chinese book publishers, experience the same difficulties we do. For example, we observe that the retail price of the original English version of the popular book *Da Vinci Code* is around HK\$ 70 – 80. The official traditional Chinese version is priced at HK\$110 but that of the PRC simplified character version is only HK\$28. Due to the relatively smaller market for traditional characters and the small size of the market in Hong Kong, if the Government does not restrict parallel imports to protect our local publishing industry, we will not be able to survive. We hope that the local book publishers will also make their submissions to you on the subject and trust they will share and endorse our view.
17. Considering the usual time lapse between first publication of an overseas title and the time we could obtain a licence to publish in Hong Kong, we strongly ask that the 18-month period should remain to maintain the criminal liability for parallel imports. We also urge the Government to allocate more resources to Hong Kong Customs & Excise to take action against parallel imports of comics.

RENTAL RIGHTS

18. The Consultation Paper seeks views on whether rental rights should be extended from computer programs and sound recordings to films. We strongly urge that rental rights be extended to comic books in Hong Kong as well. We are aware that in Japan, where most of our overseas comics (for Chinese translated versions) come from, rental rights for comics have been introduced. A Rental Rights Management Center was set up in 2004 to handle and administer a licensing scheme.
19. As copyright is an exclusive right and is a property right belonging to the owner, we do not understand why entities can freely use our publications to our great financial detriment and not have to be responsible for any form of compensation to us. We also do not understand why certain works appear to be treated more favourably under the law in terms of the protection they receive.
20. We submit that our comic industry is equally important as compared to films. According to the information we gathered, the total box office receipts of films in Hong Kong (for both local and foreign films) in 2003 and 2004 were respectively around HK\$860,000,000 and HK\$950,000,000. As shown in the attached table, the information provided by 5 of our members already showed a turnover of over HK\$297,000,000 from sale of comics alone in the year of 2003. Hence, we are

certain that the latest income from the publication and sale of comics in Hong Kong (including those of comic publishers who are not our members) is around HK\$500,000,000 a year.

21. We have been monitoring the rental market for many months. According to the information we gathered, we estimate that there are around 400 comic rental shops in Hong Kong. We estimate that our annual loss from comic books we would otherwise have sold to be in the sum of HK\$256,782,400, which is about half or more of our annual income.

DIGITAL AGENDA

22. Although uploading and downloading of our comics over the internet is not a serious issue as yet, we are concerned about the potential growth in infringement in this medium. Further, some of our members are also in the business of designing, developing and marketing computer and on-line games and products using characters they created for their comics and are naturally concerned about the intellectual property protection in this respect.
23. We are aware of the recent arrest of the first BitTorrent user in Hong Kong and the consequential legal, academic and social discussions. We also note the related issues of access and copyright protection control devices in the Consultation Paper. We consider it important that the Government should ensure that our law does not have loopholes which will allow infringements to continue over the internet medium. The information about unauthorised copying and distribution of musical works and films over the internet is alarming. We suggest the Government should perhaps consider the requirement for another set of law to deal with internet issues which shall also include the responsibilities and liabilities of internet service providers and website or newsgroup hosts.

FAIR USE

24. We prefer certainty of the law. We therefore favour the continuation of the current exhaustive list approach and add to such list only when there is strong justification and the act does not conflict with a normal exploitation of the work of the copyright owner and does not unreasonably prejudice the legitimate interests of the copyright owner.
25. Where appropriate, we agree with the introduction of a quantitative test or guideline. However, we must stress that such quantitative test will not be applicable to all types of works. For example, it will not be possible to define quantitative when is the taking of an artistic work, the form in which most of our works are in, a substantial taking as to the quality of the work.

CRIMINAL LIABILITY

26. Our position is that since there is end-user criminal liability in respect of the 4 special categories of work, such liability should be extended to cover other copyright works.
27. The piracy of comics, particularly Chinese Japanese Comics, has been serious. Since 2002, our Anti-Piracy Group has worked with the Hong Kong Customs &

Excise Department to devise strategies to curb infringement. During the process, we overcame many technical difficulties, including the procurement of authorisation and assistance from the original comics artists and authors, their publishers, and the requirements under Section 118 of the Copyright Ordinance in preparing supporting affidavits, etc.

28. Whilst the Japanese authors and publishers are supportive of our enforcement action in Hong Kong, we had to spend a great deal of time and cost in explaining to our Japanese counterparts why there were certain requirements of the law and of the Customs. The signing requirement and formality relating to the supporting affidavits/affirmations were more tedious and cumbersome than expected.
29. With great determination, we managed to satisfy the legal requirements and use certain titles as trial cases for customs action. In middle of 2003, we finally enjoyed our first round of successful raid actions. Prior to that, we issued rounds of warning letters to shops dealing with pirated copies and parallel imports but they served little, if not no, deterrence.
30. The first series of 7 successful prosecution were concluded in late 2003 with all the infringers pleaded guilty. Although that gave the market a very strong message and piracy has become less rampant, that had not yet completely killed piracy. Some dealers still think that provided they do not deal with the titles actions were taken for, they would be safe. Some continue to test their luck against the law in view of the substantial profits from dealing with pirated or parallel copies.
31. Early this year, we assisted Customs in the successful prosecution of another piracy case in which the infringer was sentenced to 8 months' imprisonment. That was the first imprisonment sentence a Federation member has obtained from infringement of its exclusive titles. We are certainly encouraged by this result and hope that piracy will truly be contained and removed.
32. To us, it is clear that no deterrence is greater than criminal prosecution with fines and/or imprisonment sanctions. We therefore strongly believe that criminal liability is necessary to serve as a proper deterrent and urge that the Government should not decriminalise parallel imports and should extend and increase criminal sanctions where infringement is rampant.

CONCLUSION

33. The Chief Executive has repeatedly advocated in his Policy Addresses the importance of developing local cultural and creative industries. We, as part of the publishing industry, anticipate and await Government's initiatives to assist us in guarding our local publishing industry and expanding our rights and opportunities overseas. We certainly need the maintenance of the status quo of our parallel import law on copyright and the extension of rental rights for comic books.
34. Given Hong Kong's strive and campaign to build up a "No Fake" City image, it is necessary to introduce stronger and more effective measures to discourage and punish infringement with criminal sanctions.

EXECUTIVE SUMMARY

In response to the Government Consultation Paper, we consider that :-

35. (a) Hong Kong should maintain the present exhaustive approach to permitted acts and add new exceptions only when justified.
- (b) End-user criminal liability should be extended to all works.
- (c) There should be no change to the parallel import law on copyright.
- (d) We do not have a collective view on the issue of whistle blower and employee defence.
- (e) We do not consider it fair the failure to produce a licence or related documentation for use of a computer program should be deemed an infringement.
- (f) We believe the digital agenda should be a separate topic of discussion and the Government should consider also the role and liability of internet service providers and website and newsgroup host.
- (g) Rental rights should be extended to films and comic books.
- (h) Hong Kong should follow international trend and practice to ensure that her intellectual property laws and development are in line with international development and expectations.

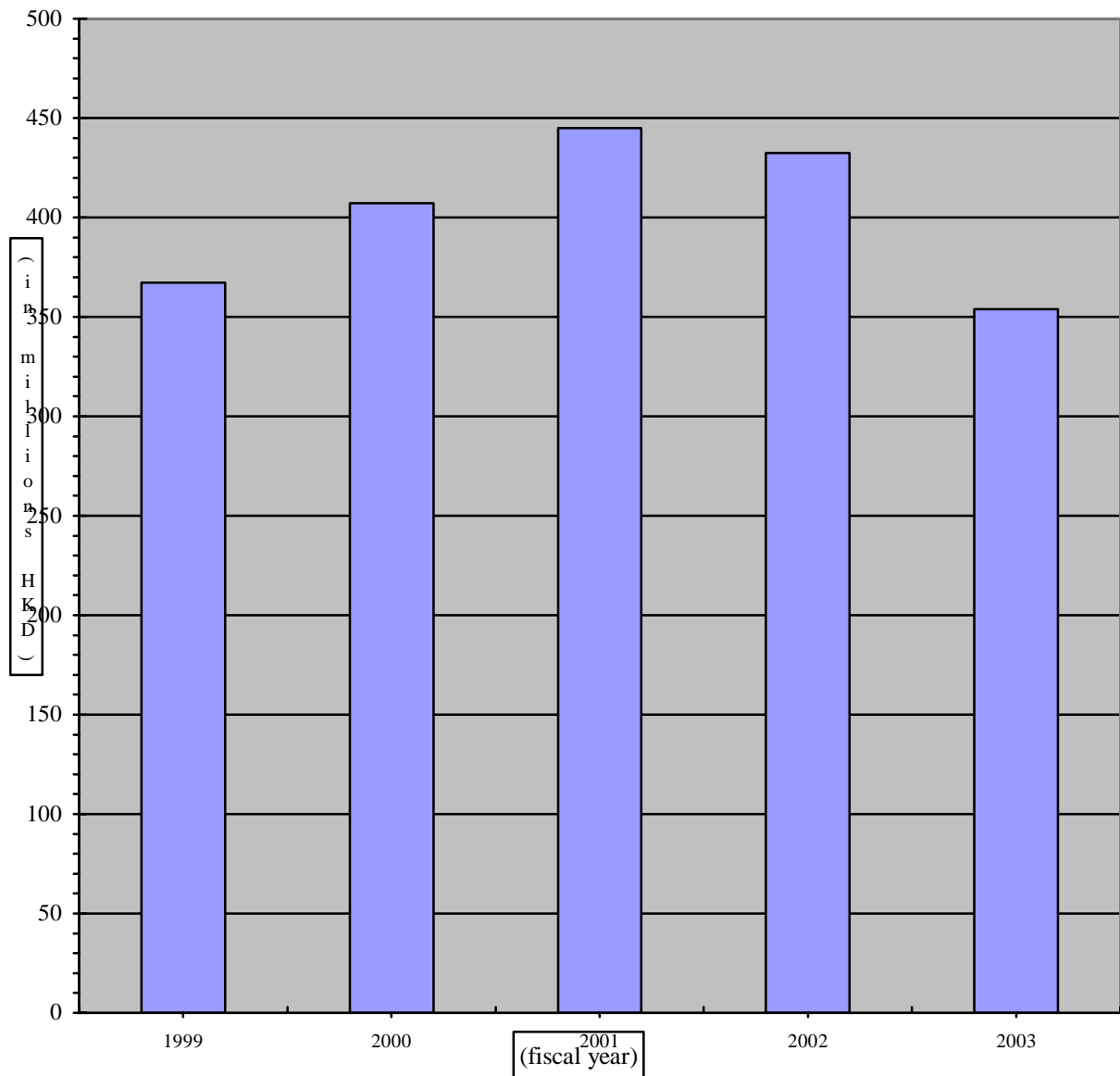
Dated 15th February 2005.

Data Provided by the Anti-Piracy Group of the Comics Federation

(A) Total income of the group (in HKD):-

1999 - 367,154,539
2000 - 407,054,946
2001 - 444,819,320
2002 - 432,318,068
2003 - 353,749,259

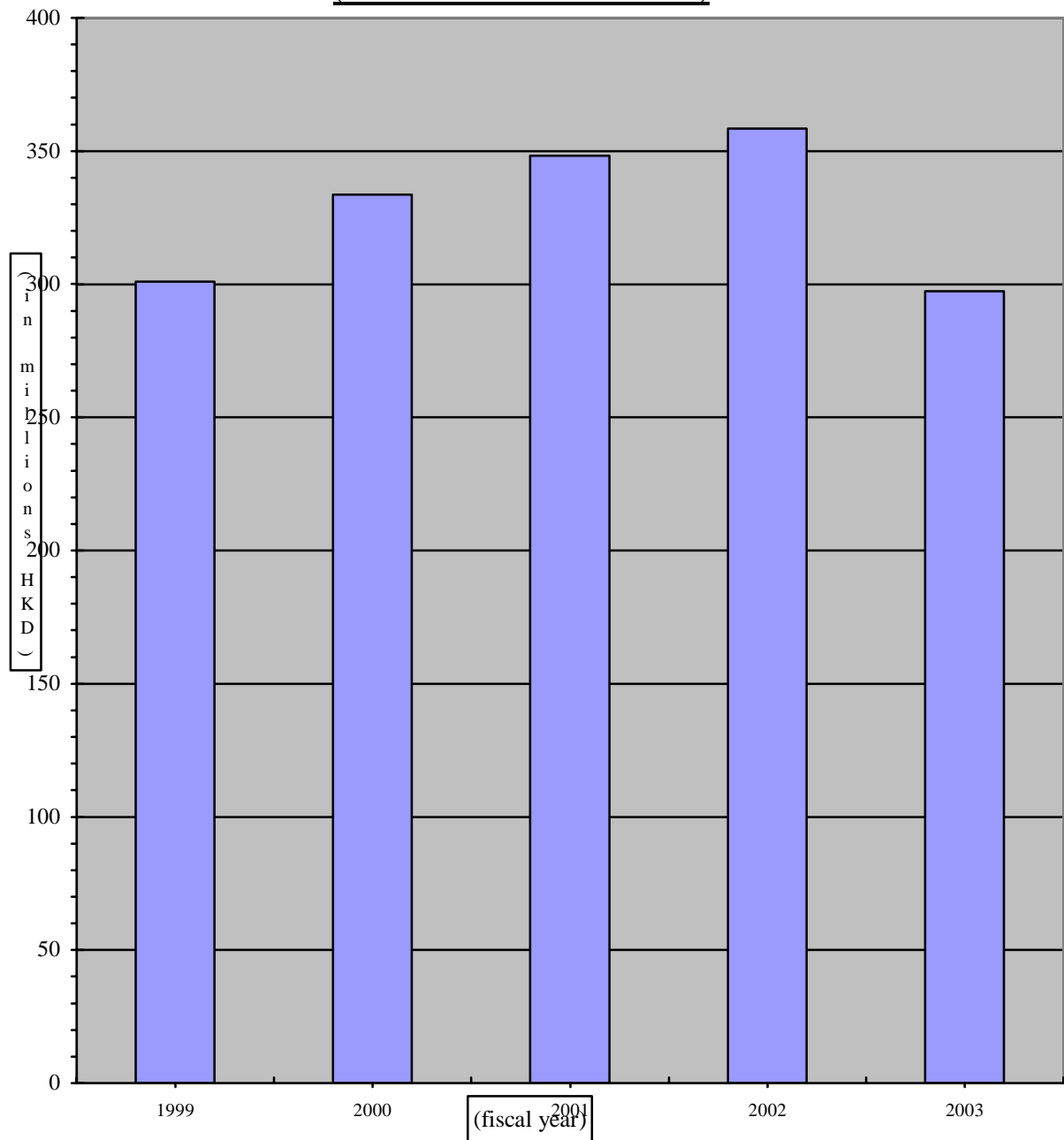
Total Income



(B) Income from sales of comics books (local + overseas comics) of the group (in HKD):-

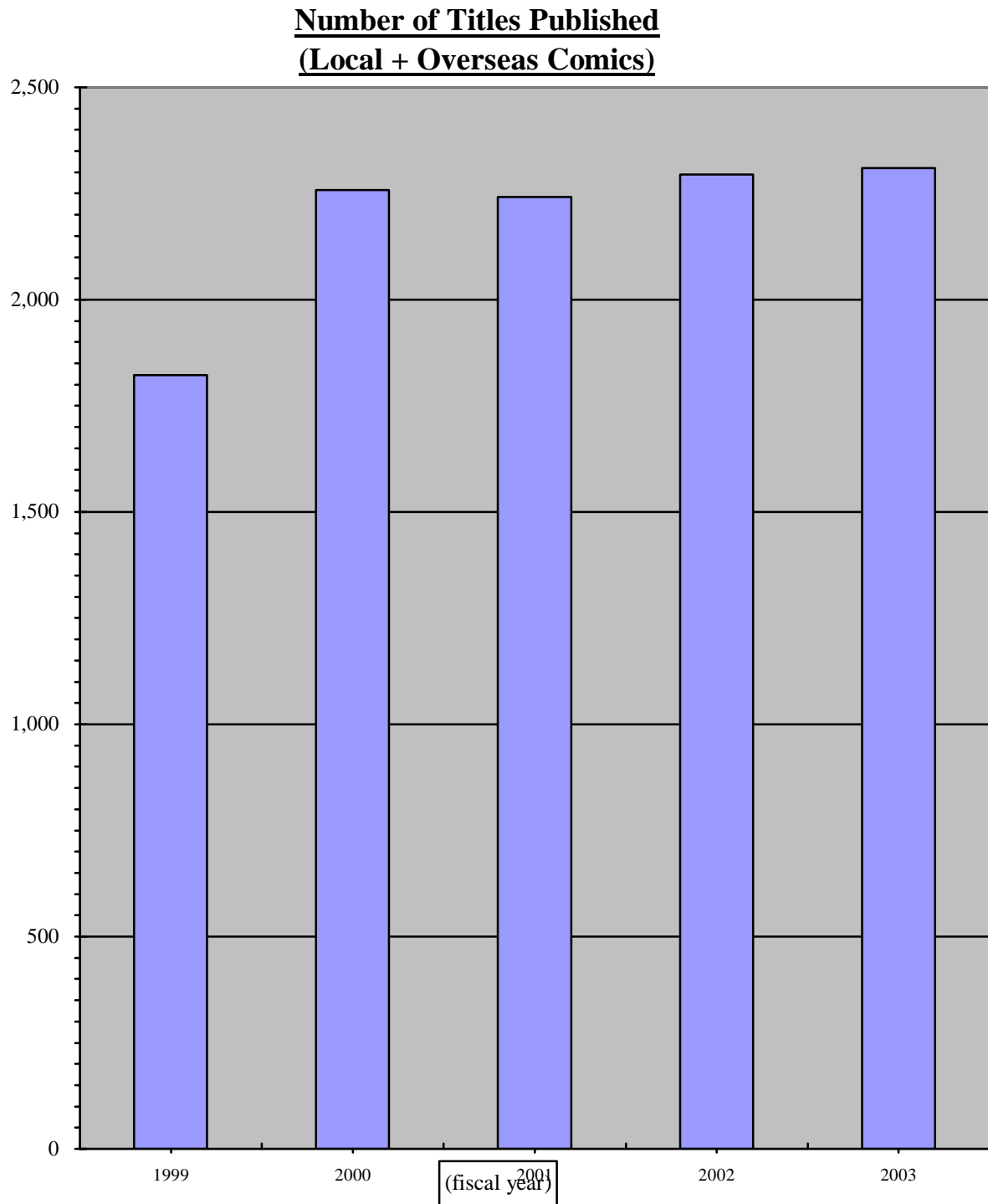
1999 - 300,863,307
2000 - 333,526,312
2001 - 348,157,710
2002 - 358,441,293
2003 - 297,390,176

Income from Sales of Comics Books
(Local + Overseas Comics)



(C) Number of titles published (local + overseas comics) by the group:-

1999 - 1,823
2000 - 2,258
2001 - 2,242
2002 - 2,295
2003 - 2,310



(D) Number of *new* titles published (local + overseas comics) by the group:-

1999 - 1,344
2000 - 1,740
2001 - 1,643
2002 - 1,632
2003 - 1,620

