

Views of the Hong Kong Comics & Animation Federation on the Copyright (Amendment) Bill 2006

The Hong Kong Comics & Animation Federation

On behalf of the comics industry and comics publishers, the Hong Kong Comics Federation (the "Federation") submits this opinion on the Copyright (Amendment) Bill 2006.

We trust that our revered Legislative Council members should have received the opinions and materials submitted by the Federation on 24 March 2006 in relation to the Copyright (Amendment) Bill 2006. We now wish to elaborate on and supplement such submissions.

The Federation firmly opposes the following three Government's proposals in the Copyright (Amendment) Bill 2006. We have also set out our suggestions for your consideration and acceptance.

Proposals by the Government in the Bill	Suggestions by the Federation
(1) Pursuant to the Government's amendments, non-profit-making and educational establishments are given a safe harbour and are relieved of criminal liabilities if the reproduced printed works are not more than 1,000 copies and are not more than HK\$8,000 in value, leaving copyright owners the only resort of civil litigation.	(1) The safe harbour thresholds should be substantially lowered.
(2) The Government proposes to give rental rights exemptions for works for on-the-spot reference use and to relieve business end-users of civil and criminal liabilities for importing and possessing parallel-imported copyright works.	(2) Exemptions for on-the-spot reference use for computer programs or sound recordings are not applicable to comic works. (3) The operation of such leisure establishments must be subject to the rental rights provisions.
(3) The Government proposes to shorten the criminal liability period for parallel imports to 9 months after publication of the copyright work.	(4) The current 18-month prohibition period for parallel-imported comic works should be maintained. Exemptions applicable to parallel imports should be defined clearly and in detail.

1. Objection to the over-lenient safe harbour

Under the Government's amendments, non-profit-making and educational establishments are given a safe harbour and are relieved of criminal liabilities if the reproduced printed works are not more than 1,000 copies and are not more than \$8,000 in value, leaving copyright owners the only resort of civil litigation.

The Federation considers that this will have a serious adverse effect on Hong Kong's publishing sector (including the comics industry). The permitted quantitative and monetary parameters will leave investors in the publishing industry totally unprotected and they may now risk a total loss of their investment! The amendment encourages free-of-charge photocopying and circulation and represents a total disrespect to intellectual property rights! Shouldn't schools be teaching their students to respect intellectual property rights?

The Federation would like to make the following points:

- (1) The legislation is unfair: Educational establishments are not allowed to reproduce one single copy of computer software or audio-visual copyright works; why should they be allowed to do so in respect of printed works?**
- (2) Without any criminal sanction, publishers can only resort to civil proceedings, which is both impractical and costly;**
- (3) The market for the Hong Kong publishing industry is small. Many books are only printed for 1,000 copies and many periodicals for 3,000 copies. The proposed safe harbour is surprisingly lax and can pose a threat to the survival of a book or periodical in Hong Kong.**

The Federation considers that the "1,000 copies" threshold is both unacceptable and unnecessary. We suggest the thresholds should be substantially lowered and the copyright owner's consent is required if the limits are exceeded.

2. Objection to "On-the-spot reference" exemptions

The Bill suggests that copyright works used for on-the-spot reference in the premises should enjoy rental rights exemptions. The Bill also proposes to relieve business end-users of civil and criminal liabilities for importing and possessing parallel-imported copyright works. The Federation considers that such moves will only enlarge the grey areas in the legislation and encourage people to take advantage of the so-called "reference use" to evade liabilities.

Japanese-style or Taiwanese-style comic cafes are increasingly popular in Hong Kong in recent years, with outlet number rising from 8% of the total comic shops in Hong Kong in 2004 to 12% as of to date.

In addition to its 800 outlets in Taiwan, "Star Book-store" has opened branches in mainland China, Hong Kong, Singapore and Malaysia. It has more than 1,000 outlets in total.

Since entering the Hong Kong market in 2003, "Star Book-store" has expanded and now has 18 branches, accounting for 40% of the comic cafes in Hong Kong! "Star Book-store" aims at running 100 outlets in Hong Kong!

This type of comic cafes charge their members by the hour and allow them to surf the Internet, have snacks/drinks, read comic books, newspaper and magazines inside the premises. If the proposals in the Bill are passed, these comic cafes can claim to be mainly providing restaurant and Internet services, whilst declaring that all comic books inside the premises are for "on-the-spot reference use", thus saving the need to pay any rental to the copyright owners. At the same time, under the label of "business end-users", these cafes can import Taiwanese editions of Japanese comics in large quantities by way of parallel imports for "on-the-spot reference use" by its members, without incurring any civil and criminal liabilities!

In view of the above, the Federation considers that this type of leisure establishments are clearly engaging in rental business. The Federation suggests to amend the rental rights provisions as follows:

We suggest that the legislation should clearly state that premises which make available comic books for "on-the-spot reference use", as long as (i) they provide comic books for on-site reading and charge with reference to duration, frequency, monthly payment or prepaid points, etc, and (ii) the total number of comic books accounts for 5% or more of the total stock of printed materials inside the premises, shall be deemed to be engaging in comic rental business and shall be subject to the rental rights provisions without any exemption. These types of premises shall also bear civil and criminal liabilities for parallel-importing copyright infringing works.

3. Objection to shortening the prohibition period for parallel imports

Parallel imports have been a problem for the publishing industry for a long time. If publications (including comics) that are authorised to be published and sold only in mainland China can be freely imported into Hong Kong, this will create an unprecedented hit on the local publishing industry and may even wipe out our local publishing industry.

The 18-month prohibition period on parallel imports in the current legislation, despite its deficiencies, still poses certain deterrent effect. Throughout these years, the comics industry has invested vast resources to resolve the problem:

- 1. Civil litigation: Since 2000, one case was settled out of court in March 2006 whilst another one is still in progress;**
- 2. Since 2000, the Federation has sent over 3,000 caution and warning letters to retailers and distributors selling parallel-imported or infringing comic works;**
- 3. The local industry has worked to shorten the time to publish and improve the quality, and has increased advertising and promotion efforts, in an attempt to encourage consumption of local comic works;**
- 4. The local industry has continued to convey the situation to and seek help from overseas copyright owners and publishers, in the hope of effectively reducing the sources of parallel imports and speeding up the licencing procedures;**
- 5. Complaints have been made to the Customs, although there has yet to be a case of successful prosecution.**

Due to the efforts of the industry in all these years, the current market situation is that there is an increased awareness of copyright on the part of the retailers. Parallel imports have gone down from 100% exposure a few years ago to 30.3% of the total rented copies

and 13.61% of the total sold copies as in February 2006. However, parallel-imported comics from mainland China have increased from 27 titles (according to a survey in April 2005) to 76 titles as in February 2006. This demonstrates the urgency under which the local industry has to act in order to deal with the influx of mainland publications into the Hong Kong market.

Reducing the prohibition period for parallel imports from 18 months to 9 months will only serve to substantially weaken the deterrent effect. The industry will be hard done by the legislation and will be seriously prejudiced with monetary losses followed. The ratio of parallel imports in the market will rise again and this will prejudice the Hong Kong economy.

The Federation objects to the shortening of the prohibition period for parallel imports on the following grounds:

- (1) It has always been the policy of the Hong Kong Government to encourage investment in the cultural and creative industries and to safeguard proper returns. The industry's request to retain the 18-month prohibition period is in line with the Government's objective. Reducing the prohibition period to 9 months is short-sighted and self-contradicting. Not only that it fails to promote the development of the cultural and creative industries, it actually further prejudices the survival of the local cultural and creative and publishing industries.
- (2) We accept the free-trade principles and agree that for industries that do not exist in Hong Kong, e.g. automobiles and cosmetics, allowing parallel imports may assist the retail sector and offer customers more choices. However, globally speaking, the Hong Kong comics industry ranks only after the USA and Japan and is one of the few major cultural and creative industries which Hong Kong has. Last year, its market size amounts to approximately HK\$800 million, more or less the same as that of the Hong Kong film industry. Comics originated in Hong Kong are exported to more than ten countries and territories all over the world, and a number of films and television series adapted from comics enjoy promising results. No doubt the suppression of parallel imports is not in line with the free-trade principles, yet even developed countries will resort to means such as quotas or tariffs to protect the development of local industries and to eradicate or minimise the impact brought by the introduction of cheaper products from foreign countries. We emphasise that the local cultural and creative industries rely on the Government in creating a suitable economic environment to foster and protect the industry development and to ensure proper returns.

For instance, the film "The Storm Riders", which topped the box office then, was adapted from a local comic. The television cartoon "Shen Bing Xiao Jiang", which will be broadcasted on CCTV from 1 May, is also adapted from a Hong Kong comic. It is also worth mentioning that the Japanese comic "The Initial D", which won 4 awards at the 30th Hong Kong Film Awards, is adapted into a film by Hong Kong people. We are therefore not talking about the narrow doctrine of protectionism, but indeed the comic industry has the same international trend as in the case of the film sector. Cultural and creative industries will only prosper under the protection of a comprehensive set of copyright legislation. The Government claims that other countries seldom have policies protecting parallel-imported copyright works. Yet we understand that even in the USA, the US Customs can confiscate

goods which have clearly been stated thereon that they are not for sale and distribution in the US. Comprehensive legal protection clearly accounts for the success of the US cultural and creative industries.

- (3) **Once the problem of parallel-imported publications intensifies, it will cast doubt over the future of the local publishing industry and the ancillary cultural and creative industries as mentioned above. Without proper returns, investment will not be forthcoming. As a counter-example, mainland China is actively promoting its cultural and creative industries at the moment. Not only does mainland China introduce all kinds of favourable policies and loans free of rent/tax/interest, she also widely recruits Hong Kong institutions and personnel in building up the industry. If the industry relocates to mainland China and only focuses on training up personnel in the mainland, everything will in fact be originated in mainland China but not in Hong Kong after 5 years! The Hong Kong cultural and creative industries are on the verge of being marginalised by the Government's legislation and the comics sector will heavily suffer!**

- (4) **More alarming is that parallel imports will heavily erode into the local market. The local publishing market will continue to shrink and the local creators and workers in the publishing industry will suffer most. Taking the example of the comics publishing sector alone and based on a conservative estimation, over 1,000 valuable talents in the cultural and creative industries, including comic writers, script-writers, assistants, translators, editors, etc will lose their jobs, together with over 1,000 workers in the publishing industry and over 3,000 retailers and distributors will also be affected - this will bring on more unemployment!**

Finally, the Federation summarises as follows:

(1) The reproduction safe harbour thresholds for educational establishments and non-profit-making institutions should be substantially lowered.
(2) "On-the-spot reference use" must be clearly defined to subject such leisure establishments to the rental rights provisions.
(3) The 18-month prohibition period for parallel-imported copyright works such as comic books should be maintained, with parallel-import exemptions defined clearly and in detail.

We sincerely ask our Legislative Council members to take the Federation's views into account when considering the Bill. This will help to project Hong Kong's cultural and creative industries to a higher level. Thank you.