

**Submissions to the Bills Committee on the
Copyright (Amendment) Bill 2006**

Improving enforcement efficiency and operation of the Copyright Ordinance and Other views			
	Organizations / Individuals	Views / Concerns	Administration's Response
1.	<p><u>Motion Picture Association (MPA)</u></p> <p><u>Movie Producers and Distributors Association of Hong Kong</u></p> <p><u>Project Management Institute (Hong Kong Chapter) (PMIHK)</u></p>	<p><u>Time limit for prosecution</u></p> <p>MPA supports the proposed amendment to time limit for prosecution.</p> <p>MPDA comments that it is relatively long to allow three years as the time limit for prosecution as the prosecution should have collected sufficient evidence when a charge is brought against piracy.</p> <p>PMIHK suggests amending section 120A to read as “no prosecution for an offence under the Ordinance shall be commenced after the expiration of three years from the date of commission of the offence or one year from the date of discovery of the offence by the prosecutor, whichever is <i>later</i>”.</p>	<p>With the frequent need to obtain evidence from overseas right-owners, the growing complexity of copyright-related offences and possible involvement of triad and syndicate elements, the Customs and Excise Department (C&ED) has found it increasingly difficult to complete investigation into copyright offences to enable prosecution actions to proceed within the existing time limit. The proposed amendment to section 120A is to address this problem so as to facilitate enforcement. It only stipulates the time limit period beyond which a charge cannot be laid against the defendant. It does not mean that C&ED would take three years to complete investigation into every single case upon enactment of the proposed amendment.</p> <p>We do not agree with PMIHK's suggestion to change the time limit for prosecution to three years from the date of commission of the offence or one year from the date of discovery of the offence by the prosecutor, whichever is later. It would mean that a charge could be laid any time irrespective of</p>

Improving enforcement efficiency and operation of the Copyright Ordinance and Other views			
	Organizations / Individuals	Views / Concerns	Administration's Response
			when the offence was committed as long as the charge was laid one year within the date of discovery of the offence by the prosecutor.
2.	<p><u>Film Industry</u></p> <ul style="list-style-type: none"> • Motion Picture Association • Movie Producers and Distributors Association of Hong Kong (MPDA) • Hong Kong Video Development Foundation (HKVDF) <p><u>Music Industry</u></p> <ul style="list-style-type: none"> • International Federation of the Phonographic Industry (Hong Kong Group) <p><u>Business and game software industry</u></p> <ul style="list-style-type: none"> • Business Software Alliance (BSA) • An organization from the game software industry <p><u>The Law Society of Hong Kong</u></p>	<p>Particulars of the author in affidavit evidence</p> <hr/> <p>All welcome the proposed amendments to section 121.</p> <p>HKVDF opines that since producer is defined as the person by whom the arrangements necessary for the making of the film are undertaken, a producer may be an individual and a corporate body. It supports the amendment for section 121. IFPI (Hong Kong Group) expresses similar views. It opines that the producer of a sound recording may be a natural person or a corporation. It agrees that section 121 related to the authorship part be amended to include body corporate.</p> <p>MPDA agrees to the proposal but cautions that care should be taken to handle affidavits which involve joint copyright by individual and body corporate, or which involve copyright transfer or change of title.</p>	<p>We note the support. As regards MPDA's comments, we would like to point out that section 121, whether in its existing form or amended as proposed, is sufficient to deal with the cases of joint authorship and transfer of titles.</p>

Improving enforcement efficiency and operation of the Copyright Ordinance and Other views			
	Organizations / Individuals	Views / Concerns	Administration's Response
3.	<p><u>Film Industry</u></p> <ul style="list-style-type: none"> • Motion Picture Association • Movie Producers and Distributors Association of Hong Kong (MPDA) <p><u>Business and game software industry</u></p> <ul style="list-style-type: none"> • Business Software Alliance(BSA) • An organization from the game software industry <p><u>The Law Society of Hong Kong</u></p>	<p>Proof of absence of licence from copyright owners</p> <hr/> <p>Welcome the proposed amendments in general.</p> <p>BSA further suggest amending sections 121(2A), (2B) and (2C) so that these provisions refer to absence of authorization rather than a licence as some industries do not issue licences to resellers or sub-distributors but provide general authorization to them to distribute legitimate copies of their works. HKITMP shares the same view. The Law Society of Hong Kong holds a similar view and considers that a licence has technical connotations and might not for example cover a sub-licence.</p> <p>The Law Society of Hong Kong suggests that section 121(2)(a)(i) should refer to a Copyright Register prescribed under subsection (16) instead of subsection (14).</p>	<p>We disagree to the suggestion by BAS and the Law Society to amend the word “licence” to “authorization in section 121 (2A), (2B) and (2C). The word “licence” in the proposed amendments is in line with the wording of the respective offences which all refer to “lack of licence” as an element of offence. The amendment proposed by BSA the Law Society will give rise to a problem of interpretation. We would also like to point out that a licence, in the present context, means no more than a permission to do an act restricted by copyright. There is no requirement that a licence be in writing or comply with other formalities. Hence, there is no difference between a permission granted under an “authorization” and that granted under a "licence". Besides, authorization or permission granted under a sub-licence by a licensee is as good as that granted under a licence by the copyright owner, provided that the licensee is permitted under the terms of his licence to so authorize others or to grant sub-licences to others. Hence, “a licence of a copyright owner” should cover the sub-licence granted by the licensee under the authorization of the copyright owner. Nonetheless, we agree</p>

Improving enforcement efficiency and operation of the Copyright Ordinance and Other views			
	Organizations / Individuals	Views / Concerns	Administration's Response
			<p>that technically, a sub-licence may not be granted by the copyright owner but the licensee. We will consider how the provision can be improved.</p> <p>The reference to "subsection (14)" in Section 121(2)(a)(i) has been amended to "subsection (16)" by L.N. 29 of 2004.</p>
4.	<p><u>Motion Picture Association</u></p> <p><u>International Intellectual Property Alliance</u></p> <p><u>Law Society of Hong Kong</u></p> <p><u>Hong Kong Institute of Trade Mark Practitioners (HKITMP)</u></p>	<p>Recognition of foreign copyright registration certificates</p> <hr/> <p>MPA further suggests that the amendment should also include a clarification that recognizes US copyright registration certificates and allows their substitution in lieu of copies of the genuine article.</p> <p>The Law Society and HKITMD suggest the passage of the draft Copyright Prescription of Copyright Registers (Regulations) put forward in 2003.</p>	<p>It is a legal requirement under section 121(1) to attach a true copy of the copyright work to the affidavit. In view of the large number of cases prosecuted every year, the burden of obtaining true copies on the copyright owners to support prosecution is understandable, but unavoidable if copyright owners want to make use of this provision to facilitate the proof of copyright. Where applicable, various means are available to ease the burden, e.g. to seek the defence's agreement on copyright before trial, to arrange for the re-use of the same true copies for different cases and to use master affidavits.</p> <p>When the Administration consulted the Panel on Commerce and Industry of the Legislative Council (CI Panel) the proposal</p>

Improving enforcement efficiency and operation of the Copyright Ordinance and Other views			
	Organizations / Individuals	Views / Concerns	Administration's Response
			to prescribe certain overseas copyright registers to allow recognition of overseas copyright registration certificates, there were concerns as to whether a local copyright register should be established and whether the proposal to prescribe the named overseas copyright registers were supported by both local and overseas copyright owners. We have completed a study on the feasibility of establishing a local copyright register in Hong Kong and have further consulted copyright owners on the proposal to prescribe overseas copyright registers. Our study reveals that it would not be cost-effective to set up a copyright register in Hong Kong. We will also put on hold the proposal to prescribe overseas copyright registers due to the diverging views of copyright owners towards this proposal. We reported our assessment and proposal to the CI Panel on 18 July 2006 and Members had no objection to our proposal not to pursue for the time being the prescription of overseas copyright registers.
5.	<u>Motion Picture Association</u>	Suggests extending the term of copyright protection as currently provided for under the Copyright Ordinance by 20 years.	It is a subject that would affect various sectors of the community and has wide implications. In assessing the implications of

Improving enforcement efficiency and operation of the Copyright Ordinance and Other views			
	Organizations / Individuals	Views / Concerns	Administration's Response
			this suggestion, we need to have due regard to the interests of both owners and users of copyright works. Views from the public need to be widely sought before any proposed amendment is to be pursued.
6.	<u>Motion Picture Association</u>	Provide its view on the four issues to be covered under the review of Copyright Protection in the Digital Environment that the Administration will soon conduct a public consultation.	We will consider the views in the context of the review of Copyright Protection in the Digital Environment.
7.	<u>Phonographic Performance (South East Asia) Ltd.</u>	Suggests amending section 81 of the Copyright Ordinance along the recent amendment to section 72 of the UK Copyright, Designs and Patents Act (CPDA) 1988. Before the amendment to the CPDA, commercial use of broadcast programmes in the UK to provide a musical ambience or musical entertainment in a public place, so long as it is not for a paying audience, does not infringe the copyright of the sound recordings in the programmes. After the amendment, such commercial use of broadcast programmes (except in some specified circumstances such as in activities of non-profit making organizations) requires a licence from the concerned copyright association of sound recordings.	We would like to point out the UK amended section 72 of the Copyright, Designs and Patents Act (CPDA) 1988 to implement the European Directive 2001/29/EC on the "harmonization of certain aspects of copyright and related rights in the information society". The proposed amendment would affect the interests of the operators of public entertainment places and we do not see strong justification in HK to limit the scope of the permitted act in section 81 of the Copyright Ordinance.

Improving enforcement efficiency and operation of the Copyright Ordinance and Other views			
	Organizations / Individuals	Views / Concerns	Administration's Response
8.	<u>PCCW Limited</u>	Considers that as the subscription television networks in Hong Kong are primarily digital, retransmission of television broadcast signals is practically feasible only by reception and retransmission from their head-ends. It considers that all operators of subscription television services should be able to receive and retransmit from their network head-ends within the protection of Section 82 of the Copyright Ordinance and suggests that section 82 be amended to clarify that interconnection on a per building basis is not required for protection under that section.	<p>We consider that section 82(1)(b) of the Copyright Ordinance is sufficiently clear that it only allows retransmission of broadcasts for including broadcasts in an interconnection involving a communal aerial broadcast distribution (CABD) (within the scope of section 8(4)(e) of the Telecommunications Ordinance), where the re-transmission is for the reception of the users of that CABD system. If the retransmission is done at network head-end such as studios, the service receivable by the users of the CABD system is unlikely to be within the scope of s81(2)(b) of the Copyright Ordinance.</p> <p>Retransmission arrangement (for free terrestrial broadcasts to be retransmitted over subscription television networks) should be voluntary agreements among the concerned parties. We see no strong reasons to change the status quo by amending section 82.</p>
9.	<u>Mr Yip Ming</u>	Suggest amending item 15 of Schedule 1	The name of item 15 of Schedule 1 is updated under clause 60(2) of the Bill.