

孖士打律師行

BY HAND

Commerce, Industry and Technology Bureau
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Our Ref: KKSJ/J6716690/3

Your Ref:

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Date: 14 December 2006

Attn : Ms Priscilla To

16th-19th Floors

Dear Sirs,

Prince's Building

Further Submissions by the Hong Kong Comics Federation on Rental Rights

10 Chater Road

We enclose for your consideration our clients' further submission on the proposed copyright law amendments. Our clients wish to take this opportunity to express their gratitude to the Bureau for taking on board their suggestions and concerns and for explaining to them the proposed changes.

Central

Hong Kong

香港中環

Please feel free to forward copies of the enclosure to the Legislative Councillors for their reference.

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Yours faithfully,

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Further submissions by the Hong Kong Comics & Animation Federation

1. The Federation makes the following submission in response to the Commerce, Industry and Technology Bureau's proposed amendments to the Copyright (Amendment Bill) issued in November 2006.

Rental rights

2. It is the Federation's view that rental rights should be applicable when readers will be charged, directly or indirectly, for reading of comic books. The Federation is grateful that the Bureau listened to its concern about the possible loopholes opened to comic cafes and tea houses if there were an exception to "on-the-spot reference".
3. The Federation is in general agreement with the wording of the provision proposed by the Bureau. However, it is suggested that the test of "substantial attributability" should be deleted as this will lead to arguments as to what should be used as the threshold for deciding whether a certain price charged is substantially attributable to the making available of comic works for on-the-spot references as opposed to other attributes of the particular business operation. We take the view that the test of "direct or indirect payment" is already sufficient and accords with the ideas underlying the notion of rental rights without affecting operation of establishments not dependent upon the commercial dealing of comic books. The Federation wishes to stress that it is not its intention to cover picture books or children's corners of bookstores.

Parallel Importation

4. The Federation reiterates that only 40% of comic titles are published in Hong Kong around 12 months after their first publication in Japan; most take a longer time. The time that has to be taken for the licensing process is entirely out of the hands of the Federation members as the Japanese licensors have their own rigid practice. As explained in previous submissions, in Japan, comics are often first published in magazines and it will take a few months before they will be consolidated to be published in a dedicated volume. It is only upon publication as a volume that the Japanese comic licensors will begin the licensing process to allow overseas licensees to obtain overseas publishing rights.
5. To the Federation, there is a practical need to retain the 18-month criminal sanction period for parallel imports based on trade practice and experience. When licensing rights are granted, the Federation members will embark on translation and marketing. The shortened period now proposed by the Bureau could mean that the Federation members may only have, at most, 3 months to prepare the licensed comics for sale in Hong Kong and to expect and receive reasonable returns. Only those comic titles which could be published within a 12-month period can have the 3-month protection period (by criminal sanction) if the period for criminal liability for parallel imports shall be 15 months from first publication.
6. The Federation cannot emphasise enough that the sale of translated comic titles is still the major source of income for its members and such income is used, amongst other things, to develop and promote local talents for the creation of local comics.

The industry will be devastated or even be wiped out if a reasonable time period for criminal sanction was not given.

7. If the Bureau is determined to relax the existing restriction against parallel imports, the Federation will endeavour to live with a 15-month criminal sanction period. This is, as stated above, already less than the absolute minimum time which is realistically needed for the Federation members to expect a reasonable period of protection for their investments in procuring licences for translated comic books for the Hong Kong market. The Federation maintains that criminal sanctions must remain in order to give sufficient deterrent against unfair competition of parallel imports. Enforcing civil rights against parallel imports is not an option for the Federation as it is not cost-efficient under the current system.
8. The Federation emphasises that the 15-month period is only acceptable when there is no better option and in view of the Bureau's proposal to facilitate enforcement.

Facilitating enforcement

9. The Federation agrees with the wording of the proposed enforcement provisions. We would however point out that the presumptions shall be clarified that they apply not only to optical discs and that besides the place of manufacture, the place of publication or printing should also be included. This means that if a copy contains a description of the manufacturer, publisher or printer whose address is not located in Hong Kong, it shall be presumed to be an imported copy.

Other aspects of the Bureau's proposals

10. The Federation does not have any further comments.

Dated 14 December 2006.

Prepared by Johnson Stokes & Master
for the Hong Kong Comics & Animation Federation