

**Submissions on the Copyright (Amendment) Bill 2006 received
after the Administration's introduction of the outstanding Committee Stage Amendments on 4 May
(as of 10 May 2007)**

Item	Organizations	Views / Concerns	Administration's Response
3	<p>International Intellectual Property Alliance (IIPA) (9 May 2007)</p> <p>International Association of Scientific, Technical and Medical Publishers (STM) (9 May 2007)</p>	<p><u>Meaning of effective technological measure at section 273</u></p> <p>IIPA reiterates its concerns that the existing meaning of "technological measure" requires a direct link to the prevention of copyright infringement. It suggests that the Administration should define "technological measure" as "technology...used in connection with the exercise of the copyright".</p>	<p>We remain of the view that the technological protection measures (TPMs) that require protection are those used by authors/ performers in connection with the exercise of their rights under the Internet Treaties and Berne Convention. The meaning of "technological measure" as provided for in the Bill reflects the above intention and is on par with the international norm for anti-circumvention provisions. Since the anti-circumvention provisions are proposed for the protection of copyright in the works to which technological measures are applied, we consider it appropriate to relate "technological measures" to the specific acts that are restricted by the copyright in the relevant works under our Copyright Ordinance. References have been made to the EC Directive 2001/29/EC (article 6(3)) and the UK Copyright Designs and Patents Act 1987 (section 296ZF).</p>

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		<p><u>Deferred commencement of section 273A</u></p> <p>STM urges the Administration to enact section 273A simultaneously with the Bill. It considers that possible exceptions could best be identified once section 273A is in force. IIPA urges the Administration to specify the date that section 273A will come into force in order to foreclose the possibility of unnecessary delay in consulting the first list of exceptions.</p>	<p>Section 273A will be enacted simultaneously with the Bill. We will not commence the operation of the provision until the first list of exceptions has been drawn up and enacted after consultation with copyright owners and users. This arrangement will provide added safeguards to users' interests. It represents a reasonable balance following the removal of the "no copyright infringement" defence provision under section 273A(1A) as originally proposed.</p> <p>It must be noted that all the provisions introducing new liabilities will not commence operation immediately upon enactment of the Bill. We need to conduct various publicity and public education activities to get the community well-informed and prepared for the new liabilities. The Administration will consult the public on the first exclusion notice as soon as possible after the enactment of the Bill while the publicity and public education activities are underway. We believe that, in practice, the commencement of section 273A would not take much (if any) longer than other anti-circumvention provisions.</p> <p>We do not consider it desirable to fix a</p>

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		<p><u>Exception to section 273A for carrying out certain permitted acts relating to preservation-related activities of libraries and archives</u></p> <p>STM is of the view that section 273D(7) is unnecessary as preservation of copyright works can fully be achieved by preserving the work in analogue (but not in digital) form. Hence, libraries and archives do not need a right to hack. It also suggests deleting the reference to section 50 which concerns supply of copies to other libraries as the section does not relate to preservation of works but could have detrimental impact on the subscriptions which libraries have with publishers and therefore on publishers' primary exploitation of their publication.</p>	<p>commencement date in the Bill. It lacks flexibility. The use of a commencement notice to bring new liability provisions into effect on a suitable date is commonly adopted in other legislative exercises.</p> <p>The exception at 273D(7) seeks to address the concerns of library and education sectors. These sectors reflected to us that they should not be held liable under section 273A if their act of circumvention is done solely for the purpose of carrying out a permitted act under the Copyright Ordinance for archival and preservation-related activities. With the rapid development of technology, it is expected that libraries and archives may need to make copies of TPM-protected works for preservation and archival purposes as the original format of the work may become obsolete or the work may be lost through deterioration if no replacement copy can be made. We doubt if the equivalent analogue form is available on every occasion.</p> <p>We must emphasize that the proposed exception</p>

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			<p>has been carefully crafted. It would only apply if the <u>sole purpose</u> of the act of circumvention of a specified library or archive is for carrying out any of the permitted acts under section 50, 51 or 53. The making of a copy of certain category of works (namely, published edition of a literary, dramatic or musical work, or a sound recording or film) under section 50 of the Copyright Ordinance is subject to the condition that the name and address of a person entitled to authorize the making of the copy cannot be ascertained by reasonable inquiry. Hence, if the identity and whereabouts of the owner is available, the specified library or archive could not make use of the permitted act and no exception for the act of circumvention would apply. We fail to see how section 50 may apply to current items which are subscribed by libraries, as the names and addresses of persons entitled to authorize the making of copy of such items should be readily available information.</p> <p>Besides, the permitted acts at sections 50, 51 or 53 are all subject to the primary consideration at section 37(3), i.e. the act does not conflict with a normal exploitation of the work by the copyright owner and does not unreasonably prejudice the legitimate interests of the copyright owner. Where the doing of any restricted act referred to</p>

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		<p><u>Section 273H</u></p> <p>IIPA comments that the scope of section 273H is too wide as it also empowers the making of exception to sections 273B, 273C and 273G which concern dealing in of circumvention devices and application of all prohibitions with respect to performances. It urges the Administration to limit the scope of 273H to empower the making of further exceptions to section 273A (which concerns the act of circumvention) only.</p>	<p>in sections 50, 51 and 53 does not meet this primary consideration, the act will not be permitted and no exception for the act of circumvention would apply.</p> <p>Section 273H is an empowering provision which enables exceptions to be provided (after going through a due and open legislative process) in case users' legitimate interests in using copyright works are adversely impaired by the anti-circumvention provisions. Copyright owners' interests are safeguarded by the condition that the use of the works should not constitute copyright infringement. We consider it appropriate to apply the section not only to section 273A, but also to sections 273B, 273C and 273G.</p> <p>Whilst the empowering provision is crafted along this way, whether an exception is to be provided for under sections 273B, 273C and 273G would depend on the circumstances of the case and whether copyright owners would offer voluntary measures to address users' concerns. Thorough consultation with the public and stakeholders would be conducted before the Secretary for Commerce, Industry and Technology exercises his power under section 273H.</p>

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4	International Federation of the Phonographic Industry (Hong Kong Group) (10 May 2007)	<p><u>Parallel import</u></p> <p>IFPI (HKG) points out that Hong Kong has been ranked as the freest economy in the world in the Index of Economic Freedom by the US Heritage Foundation since 1995. The parallel import policy on copyright (which has been in place since June 27, 1997) has not in any way impeded the ranking. It is understandable as copyright-related trade represents a very tiny fraction of the total trading volume in our economic structure. However, it represents the cultural heritage and social values of our society. IFPI (HKG) opines that it is simply not right to destroy the values in the purported banner of the freest economy or in the context of trade values. In its view, the proposed liberalization of parallel imports is incongruous with the cultural heritage preservation. In practice, it will discourage, deprive and demoralize any further private investment in our cultural industry.</p>	<p>Our long term objective to fully liberalize the use of parallel imports of copyright works is in line with the community's aspirations for free circulation of such items in Hong Kong, being the freest market economy in the world.</p> <p>IFPI (HKG)'s opinion that liberalization of parallel imports would hamper preservation of cultural heritage is in our view misguided. In our view, the crux of the matter lies in the question of business model. At present, we are faced with the situation where various creative industries in Hong Kong remain heavily reliant on the differential pricing strategy in different geographical markets as a means to recoup their investment and to re-invest in new productions. That may change in the course of time. We have emphasized that, in pursuing the long-term objective of complete liberalization of parallel imports, the community as a whole should not lose sight of the copyright industries' operation and concerns. A progressive approach is therefore adopted.</p>