

Further Submissions by the Hong Kong Comics Federation on Rental Rights

Following our two previous submissions in February and July 2005, the Commerce, Industry and Technology Bureau issued some preliminary and refined proposals on various copyright-related issues. The Federation has responded to some of those proposals directly with the Bureau. We now further address the Bureau's proposals and concerns in this submissions.

Definition of 'Comic Books'

1. Government councillors have expressed some concerns against rental rights being applied to picture books for children and book shops with children's corners. We believe a definition of 'comic book' will clearly draw the distinction between comics we seek to protect and children picture books. We propose to define a 'comic book' as "a publication in which a story is or stories are told primarily by drawings supplemented by words or by both drawings and words but shall not include a publication in which a story is or stories are told primarily by words with some drawings included only for purposes of illustration or background".
2. We consider that despite the abundance of illustrations, storylines in picture books are nonetheless developed by the words used. Illustrations are simply put in place as an accessory to aid the understanding of the storyline and can, in most cases, be disposed of without affecting the meaning of the story or the underlying messages that the language intends to convey. Therefore, our proposed definition should effectively eliminate any picture books and books in children's corners (provided they are not comic books) from being affected by the proposed rental rights provisions.

Exemptions to the application of rental right

3. It is our position that any use of comic books, as defined above, unless expressly or impliedly authorised by the authors or publishers who own the copyright in the work, should attract rental rights. However, in light of the government's concerns, we are prepared to accept certain exemptions to the application of rental rights. The first exemption is "on-the-spot-reference-use". This means that prospective customers shall not be charged for briefly browsing comic books as part of the decision making process whether or not to purchase or rent them.
4. It is extremely important to us that comic cafes will not be able to bypass rental rights by suggesting on-the-spot-reference as a defence (i.e. by claiming that they are merely providing for on-the-spot-reference of comic books, which they charge for). Hence, this exemption can only apply when no fee is charged directly or indirectly for such browsing.
5. Secondly, in light of the trend for more creative and attractive methods of teaching and learning, we are willing to recognize non-application of rental right provisions with regard to research involving comic books. However, we can only accept this to apply over research conducted in educational establishments, specified libraries or archives.
6. We understand that certain clubs, societies or organizations may provide comic books at their venues solely for the purpose of their members' or visitors' entertainment and leisure. Examples like The Boys' and Girls' Clubs Associations of Hong Kong (香港小童群益會) and various community centres (社區中心) have been cited. As the existence of such clubs, societies and organizations are not dependent upon the provision of comic books and they do not benefit financially as a result, we accept that

rental rights shall not be levied upon such venues. That said, we are mindful to be careful not to extend this exemption too widely as there will be too much room for abuse. It is therefore necessary to confine the scope of the clubs, societies and organizations which will be exempted.

7. We therefore suggest the exemptions to rental rights be defined as follows:-

'The expression "rental" shall not include making available (comic books) for:-

- (a) browsing to allow members of public to decide whether or not to buy or rent the comic books provided that no fee is charged directly or indirectly on the members of public for such browsing;
- (b) purposes of research in educational establishments, specified libraries or archives and references in clubs, societies or organizations specified in Section 76 of the Copyright Ordinance (i.e. clubs, societies or organizations not established or conducted for profit and their main objects are charitable or are otherwise concerned with the advancement of religion, education or social welfare; and the proceeds of any charge for admission are applied solely for the purposes of the club, society or organization.")

Practical consequences following introduction of rental licensing schemes

8. It seems that the main concerns of the government and the industry in the introduction of rental licensing schemes are, firstly, the level of license fees that will be charged and secondly, the fact that functional licensing schemes must first be applicable to a considerable amount of copyright materials before the scheme can actually be implemented.
9. In this respect, it is certainly in the interests of our members, the book rental operators and the comics industry as a whole to see that the licensing scheme will be successful to bring in proper income for comics developers (authors and publishers), to enhance interests in comics and to encourage a wider readership and circulation of comic books. We will work with our members and book rental operators (who will essentially become our partners) to agree on a justifiable and reasonable licensing structure and fees. To further relieve any concerns the industry may have about the reasonableness of the scheme, we have no objections in extending the jurisdiction of the Copyright Tribunal to cover comic book licensing schemes.

Non-applicability of 'safe harbour' to comics

10. Over the course of consultation, a "safe harbour" rule, by which members of the public may freely make copies of certain works without any infringement liability, was suggested by the government. We strongly submit that this rule should not be applied to comic books.
11. While members of the public may copy extracts of newspapers, magazines, periodicals and books to share or disseminate certain articles or information or for instruction purposes, this does not often happen to comic books. This may be due to the fact that the majority of comic books are more in the nature of entertainment consumables although there is of course a good and growing variety of style and subjects which have a high educational value besides being entertainment.

12. Due to the immediate visual impact and instant relay of messages through graphical expressions, we do not encourage any unauthorized copying as it will directly prejudice the economic value of the work. We wish to draw an analogy to movies. As each negative of a movie can be protected as a separate piece of artistic work, there is no reason why each frame of a comic should not be likewise protected as each film of a movie. We are therefore adamantly against the application of a 'safe harbour' rule to comics.

Parallel imports

13. We have previously advised the Bureau that any reduction of the period for criminal sanction against parallel imports will simply encourage the influx of parallel imported comics, particularly those from Taiwan and the PRC and will basically wipe out the Hong Kong comics market, especially in translated comics. It will also pose serious threats to local comics which, for legitimate commercial reasons, need to have different pricing and product strategies in different market - the most obvious would be the offering of a cheaper simplified character version for China (because of lower purchasing power but a potentially much larger market in China) and a higher price traditional character version for the Hong Kong (basically because cost is higher and the market smaller).
14. As we have explained, Japan is the main source of translated comics. Typically, 5 - 6 months or more is needed before licensing rights may be granted by the Japanese right owners to overseas publishers such as members of the Federation. As such, only about 40% of the comic titles will be published in Hong Kong 12 months after their first publication in Japan. Our members would like the licensing process be shortened and expedited but the mentality of the Japanese rights owners and their licensing system is rigid and bureaucratic. Our members do not have the bargaining power to press the Japanese publishers to change their practice. It should be noted that our members are already fighting hard against competitors from Taiwan and the PRC who try to impress the Japanese right owners to expand the territorial scope of their licence.
15. We note that the Bureau considered the regimes of Singapore and New Zealand in arriving at the current proposal. It must be stressed, however, that so far as comics are concerned, Hong Kong is placed in an exceptionally disadvantaged position because of its compatibility in language and geographical position with its competitors (particularly those from Taiwan and the PRC). Singapore and New Zealand further differ from Hong Kong in that they do not publish as many translated titles as Hong Kong does nor do they have as dynamic and popular a local comics industry as Hong Kong enjoys. It is submitted, therefore, that comparison with those two countries is inappropriate.
16. We cannot stress enough that the proposed change in the parallel import sections in the copyright law will devastate and ultimately wipe out the comics industry. We have already pointed out that many of our members rely on the scale of operation and profits from dealing with translated comics to support their local titles. To us, the proposed reduction for criminal liability is wholly inconsistent with the Government's proposals of preserving and strengthening Hong Kong's creative and cultural industries. We strongly urge the Bureau and the legislators to seriously consider the detrimental repercussions of any relaxation in the parallel import provisions to our industry.

Dated 15 September 2006.

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for the Hong Kong Comics & Animation Federation