

**For discussion on
15 November 2005**

Legislative Council Panel on Commerce and Industry

Refined Proposals on Various Copyright-Related Issues

Introduction

In June 2005, we announced a package of preliminary proposals on various copyright-related issues formulated after a public consultation exercise early this year on the review of certain provisions of the Copyright Ordinance (Cap. 528). This paper reports on the major feedbacks that we received about the preliminary proposals from stakeholder groups and briefs Members on our proposed refinements to some of the proposals.

Consultation with stakeholder groups

A 2. At the meeting of this Panel on 21 June 2005, we briefed Members of our preliminary proposals on various copyright-related issues [LC Paper No. CB(1)1792/04-05(05)]. Following that briefing, this Panel received around 60 submissions and met deputations from the public and copyright owners at its meeting in July 2005. A summary of the views expressed in these submissions and our response is at Annex A. We have also solicited views from major copyright work user groups (including chambers of commerce, small and medium enterprise (SME) associations, the Consumer Council, the 18 District Councils, educational establishments not subvented by the Government, welfare organizations and major religious bodies) and held discussions with copyright owners. After having carefully considered all the views expressed, we propose that some of the preliminary proposals should be refined and the details are set out in the following sections.

B A summary comparing our preliminary and refined proposals is at Annex B.

Business End-user Criminal Liability

(a) Proposed criminal liability for copying/distributing copyright infringing printed works

3. One of our preliminary proposals is to introduce a new criminal offence for significant infringements involving copying with a view to distributing or distributing infringing copies of copyright works published in

four types of printed works (i.e. newspapers, magazines, periodicals and books) in the course of and for the purpose of business to staff or participants of activities organized by the business (ref. paragraphs 9 to 15 of LC Paper No. CB(1)1792/04-05(05)). Copyright work user groups that we have approached in the past few months remain very concerned about the proposed offence for fear that it would affect the free flow of information and hinder the development of Hong Kong into a knowledge-based economy. Some question the justifications for criminalizing business end-users and cast doubt on the severity of the infringement situation as claimed by the publishing industry.

4. Most user groups have refrained from coming forward with specific perimeters for the “safe harbour” for different reasons, some because they reject the proposed criminal offence altogether, some because they consider it not practicable to devise any numerical perimeters, and some because they are only concerned that the perimeters should be very lenient to prevent adverse impact on the free flow of information. Only one chamber of commerce has suggested that the proposed criminal offence should not catch an act where the infringing copy accounts for less than 3-5% of the total number of pages of the book from which the infringing copy was made or distributed.

5. Copyright owners in the publishing industry have suggested various perimeters beyond which the proposed criminal liability would apply. For copyright works in newspapers, the Hong Kong Copyright Licensing Association Limited (HKCLA representing 12 local newspapers) has proposed that the “safe harbour” should be not more than 300 infringing copies of copyright works from newspapers within a 14-day period. For copyright works in books (including academic journals), the Hong Kong and International Publishers’ Alliance (HKIPA representing local and foreign book publishers) has proposed that the offence should cover infringing acts which are committed regularly or frequently, or otherwise if the retail value of the total number of infringing copies made for distribution or distributed within a 180-day period exceeds \$2,000. For determination of regularity, frequency or retail value, the HKIPA has proposed that infringing copies made/distributed on a single occasion not exceeding 15% of the number of pages of the book concerned, or the cumulative infringing copies made/distributed within a 180-day period not exceeding 30% of the number of pages of the book concerned should not be counted.

6. On balance, we consider the proposed criminal offence should not cover casual or ad hoc copyright infringements for business end-users because this already attracts civil liability. We consider that the proposed business

end-user copying/distribution criminal offence should only target at users who commit the concerned infringing acts on a regular or frequent basis.

7. We also consider the perimeters of the “safe harbour” as suggested by copyright owners on the low side. We propose adopting the following perimeters -

- (a) for copyright works in newspapers, magazines and periodicals (excluding academic journals), the proposed business end-user copying/distribution criminal offence will not apply if the number of infringing copies made for distribution or distributed does not exceed 1,000 copies within any 14-day period; and
- (b) for copyright works in books (including academic journals), the proposed business end-user copying/distribution offence will not apply if the total retail value of the infringing copies made for distribution or distributed within a 180-day period does not exceed \$8,000, assuming that one infringing copy of more than 15% of the number of pages of the book concerned (a qualifying infringing copy) only will count for the purpose of calculating the retail value perimeter. Non-qualifying infringing copies will not count for the purpose of retail value calculation except when the cumulative number of copies made/distributed within the 180-day period exceeds 50% of the number of pages of the book concerned, in which case all the non-qualifying infringing copies together will count for the purpose of calculating the retail value perimeter.

8. Another one of our preliminary proposals is to exempt non-profit making educational establishments and educational establishments subvented by the Government from the proposed business end-user copying/distribution criminal offence in order to facilitate teaching. The HKIPA has demanded strongly that the proposed exemption should not apply to infringing acts involving textbooks and materials marketed primarily for instructional uses. It claims that without criminal sanction, educational establishments would continue to distribute infringing copies to students, thereby destroying the potential market for their works. On the other hand, some user groups have suggested that the proposed exemption should extend to all profit-making schools, charitable and welfare organizations, chambers of commerce and other non-profit making organizations.

9. We do not propose any change to this preliminary proposal. We consider our proposed scope of exemption is appropriate having regard to the community's concerns about hindrance to classroom teaching on the one hand and the impact on copyright owners' interests on the other.

(b) Directors'/partners' criminal liability

10. Another one of our preliminary proposals is that if a body corporate or a partnership committed an act attracting any business end-user criminal offence, the director(s) of the body corporate or the partner(s) of the partnership would be equally liable in the same case unless there is evidence showing that the director(s)/partner(s) has not authorized the infringing act to be done (ref. paragraph 18 of LC Paper No. CB(1)1792/04-05(05)). Some user groups have expressed strong reservation to the implied shift in the burden of proof embedded in the proposed criminal liability. They have also questioned its consistency with the principle of presumption of innocence. They have advised that it would be difficult for directors and partners to have full knowledge of and control over their staff's activities in the course of business. Only one chamber of commerce supports this proposal.

11. We wish to make it clear that the proposed criminal offence will only place an evidential burden and not a legal burden of proof on the defendant. The latter requires the defendant to prove, on the balance of probabilities, a matter which is essential to determine his guilt or innocence. An evidential burden, however, only requires the defendant to adduce sufficient evidence to raise a defence/doubt to absolve his liability. Nonetheless, we accept it may be too onerous to impose a criminal liability on all directors and partners. Accordingly, we propose to limit the scope of the proposed criminal liability to cover only those directors, partners or persons that carry out chief executive functions.

Circumvention of Technological Measures for Copyright Protection

(a) Criminal provision against commercial dealing

12. One of our preliminary proposals is to introduce a new criminal offence against the commercial dealing of devices, products or components to circumvent effective technological measures for copyright protection applied to a copy of copyright work, or the provision of commercial service to enable or facilitate the circumvention of such effective technological measures (ref. paragraph 36 of LC Paper No. CB(1)1792/04-05(05)). We have been alerted to the fact that certain technological measures that prevent copyright infringements also perform an area code restriction function for the purpose of

controlling market segmentation. Users may use the same devices, products or components that circumvent copyright-protection measures to gain access to and use parallel imported items of copyright works. An example is some modifying chips currently available for sale and installation in some modified game consoles. The proposal to criminalize the sale and installation of these modifying chips would have the inadvertent effect of affecting consumers' access to parallel imported computer games which has already been liberalized since 2003.

13. The computer game industry has objected to any reduction in the scope of the proposed criminal offence to take into account the above practical situation. It has maintained that doing so would create a great loophole in the protection for effective technological measures. It has claimed that the local market for parallel imported games is insignificant and that the concerned modifying chips or modified game consoles are acquired by consumers mostly for the purpose of playing pirated rather than parallel imported games. It is of the view that consumers can easily acquire game consoles with the corresponding area code to play parallel imported games.

14. User groups, on the other hand, are seriously concerned that the proposal, if not amended, would deprive users' legitimate access to and use of copyright works.

15. On balance, we propose to narrow the scope of the proposed criminal sanction so that it will not cover those copyright protection technological measures that are applied to a copy of a copyright work embodied in a physical article and also have the effect of controlling market segmentation through area code restriction. In other words, the proposed criminal sanction will only apply to those physical copies of computer games protected by effective technological measures which do not have an area code restriction function.

(b) Civil liability for the act of circumvention

16. Another one of our preliminary proposals is to provide civil remedies against the act of circumvention of effective technological measures (including both copy protection measures and access control measures) applied to copyright works to prevent infringements (ref. paragraph 33 of LC Paper No. CB(1)1792/04-05(05)). However, some user groups are concerned that this proposal would render it unlawful to play parallel imported games by using modified game consoles. Representatives from the education sector have also suggested that in addition to research into cryptography, we should consider exempting other activities (e.g. reverse engineering, protecting

privacy and testing the security of computer system and network) from the act of circumvention. Some have suggested that the exemption should apply to all kinds of scientific research and technological developments. Some have advised that users of copyright works (such as libraries) should be able to circumvent technological measures to gain access to copyright works for permitted acts.

17. On balance, we propose to narrow the scope of the proposed civil liability so that it should only apply if the person who commits the act of circumvention knows or has reasonable grounds to know that he is pursuing a circumvention objective and with a view to inducing, enabling, facilitating or concealing an infringement of copyright.

(c) Exemptions

18. In our preliminary proposals, we have suggested to provide an exemption from the proposed civil liability associated with the act of circumvention for research into cryptography. In view of the suggestions of user groups and the education sector in paragraph 16 above, we propose to introduce broader exemptions from any civil liability in respect of circumvention activities to cover the following purposes -

- (a) achieving interoperability of an independently created computer program;
- (b) identifying and disabling the personal data collection and dissemination function of a technological measure to protect privacy;
- (c) security testing;
- (d) using parallel imported items of copyright works;
- (e) preventing access by minors to harmful materials on the Internet; and
- (f) undertaking law enforcement.

19. We will explore with copyright owners suitable formulation to give effect to the above exemptions. Depending on the detailed formulation of the proposed criminal provision against commercial dealing in circumvention devices and services, we may need to introduce exemptions from the proposed criminal liability to cover some of the above purposes. We will discuss further with copyright owners and user groups and consider that, where appropriate, similar exemptions should be provided for the proposed criminal provision against commercial dealing of circumvention devices and services.

Parallel Importation of Copyright Works

20. Another one of our preliminary proposals is to remove the criminal and civil liability for the importation and possession for use of parallel imports of copyright works by educational establishments and libraries for their education and library uses, and to retain all other existing restrictions on parallel imports of copyright works (ref. paragraphs 37 and 38 of LC Paper No. CB(1)1792/04-05(05)). All user groups (except one chamber of commerce) have demanded further liberalization of parallel imports. They want to decriminalize altogether the parallel importation of genuine copyright works on the ground that exclusive licensees' interests should not be protected by criminal sanction, failing which they want to shorten the existing 18-month period after public release during which parallel importation of copyright works attracts criminal liability. Some have suggested that the retention of the 18-month criminal liability period is at odds with the increasing trend of borderless sale through the Internet.

21. Copyright owners in the film, music and publication industries, on the other hand, have strongly objected to any shortening or removing the 18-month criminal liability period. The film industry has claimed that any shortening of the period would discourage distributors from acquiring licensing rights to distribute local and overseas movies as parallel importers may free-ride on the exclusive licensee's marketing efforts. This would significantly reduce the licence fees that copyright owners may collect, resulting in serious difficulties for the film industry to raise the necessary finance for film production in Hong Kong. The music industry has maintained that copyright owners have production and distribution rights and that they are entitled to segment different geographical markets for commercial exploitation of their work by themselves or through their exclusive licensees. They have claimed that interference with such rights would discourage investment in creative industries and adversely affect the development of Hong Kong's economy. Both the film and music industries have asked to extend the 18-month criminal liability period to 24 months. They maintain this would encourage users to acquire copies of their works through the digital channel (instead of a cheaper parallel imported version) which would in turn facilitate the establishment of a digital publication centre in Hong Kong.

22. The book and comic publishing industries are also against any reducing or removal of the 18-month period after public release during which parallel imports would attract criminal liability. The book publishers have suggested that there is no urgent need to liberalise parallel importation, that the existing 18-month period is already not adequate as publishers of books targeting at long-term sale normally require several years before they can

achieve break even or some reasonable return, that any shortening or removal of the 18-month period would wipe out local production because the local market would be flooded by much cheaper parallel imports from the Mainland. The comic industry has claimed that the 18-month period cannot be shortened as Japanese publishers typically grant overseas publication licences only after their works have been published as serials in local magazines. This means that licences for overseas publication are normally granted about seven months after the first part of the serial has been published in Japan. It would then take another three months for Hong Kong publishers to publish and promote the Hong Kong edition, and another six months to gather evidence and all relevant documents for the Customs and Excise Department to take actions against the sale of parallel imported versions (usually Taiwan and Mainland versions) of the same comic story. The comic industry has estimated that parallel imports of comic books already resulted in 10-20% loss in the industry's annual turnover and the removal of the 18-month criminal liability period would wipe out the local industry. It also maintains that the industry has difficulty taking civil actions against a great number of small retailers because the high legal fees cannot be offset by the very limited compensation upon successful litigation.

23. Our research shows that the treatment of parallel import of copyright works varies in different economies. Criminal and civil provisions exist in the US, the UK in respect of parallel importation from non-EU countries and Australia in respect of parallel imports of certain types of copyright works. However, Singapore does not restrict parallel importation of copyright works and New Zealand only imposes civil liability on parallel importation for films under limited circumstances.

24. On balance, we propose to further liberalize parallel importation by -

- (a) removing the civil and criminal liability pertaining to the importation and possession for use of parallel imports of copyright works by all business end-users except those for commercial dealing purposes; and
- (b) reducing the period during which parallel imports would attract criminal liability to nine months after public release.

25. On item (a) of paragraph 24 above, given the music and film industries' grave concern that complete liberalization for business end-use would enable local businesses such as karaoke, coffee shops and restaurants to parallel import and play or show in public new songs or movies still being

promoted or screened in cinemas in Hong Kong, we propose that the relaxation for business end-use will not apply to parallel imported musical sound recordings, musical visual recordings, movies and TV dramas used for public performance purposes.

Way forward

26. We are now preparing the necessary legislative amendments to the Copyright Ordinance (Cap. 528) along the lines of all the preliminary proposals as refined. Our plan is to introduce the amendment bill into the Legislative Council in early 2006. We will continue to discuss with stakeholder groups as we further develop the proposals in the course of drafting the amendment bill. Members are invited to give their views on the above refined proposals.

Commerce and Industry Branch
Commerce, Industry and Technology Bureau
November 2005

**Submissions to the Panel on the
Administration's Preliminary Proposals on Various Copyright-Related Issues**

Annex A

<p>1. Scope of Business End-user Possession Criminal Liability (Para. 8 of LC Paper No. CB(1)1792/04-05(05))</p> <p>- to maintain the existing scope of end-user criminal liability relating to the possession of an infringing copy of a copyright work for use in business to the four categories of copyright works (i.e., computer programs, musical recordings, TV dramas and movies)</p>			
	Organizations / Individuals	Views / Concerns	Administration's Response
1.1	<p><u>Trade Organisations</u></p> <ul style="list-style-type: none"> ● Hong Kong General Chamber of Commerce (HKGCC) ● Federation of Hong Kong Industries (FHKI) ● The Hong Kong Association of Banks <p><u>Social Welfare Organization</u></p> <ul style="list-style-type: none"> ● The Hong Kong Council of Social Services (HKCSS) 	<p>All support that the existing scope of the business end-user possession criminal liability should not be extended, except that HKGCC suggests the Administration to consider extending the liability to cover all TV programmes rather than TV dramas only.</p>	<p>We do not consider it appropriate to extend the scope of the business end-user possession offence to non-dramatic TV programmes as there is no evidence showing that the use of infringing copies of such programmes in business is rampant.</p>
1.2	<p><u>Publication Industry</u></p> <ul style="list-style-type: none"> ● The Anglo-Chinese Textbook Publishers Organisation ● Aristo Educational Press Ltd. ● Canotta Publishing Co., Ltd. ● Chung Tai Educational Press ● The Commercial Press (HK) Ltd. ● Greenwood Press ● Hon Wing Book Co., Ltd. ● Hong Kong Comics Federation ● Hong Kong Educational Publishers Association ● Hong Kong Educational Publishing Co. 	<p>Book publishers continue to object to excluding printed copyright works from the scope of business end-user possession criminal liability for the reason that it is unfair to accord less protection to printed works vis-à-vis the four categories of works. Most also opine that the proposal is inconsistent with Article 61 of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) since infringing activity on a commercial scale would not be subject to criminal penalties if it involves works falling outside the four categories of works. The proposed business end-user copying/distribution offence (see Issue 2 below) will partially fill the gap created by this proposal.</p>	<p>Our current proposal to maintain the existing scope of the business end-user possession criminal liability is appropriate having regard to the community's grave concern over the implications of any extension of this liability to printed works on free flow of information and classroom teaching. We would like to point out that there is no standard international practice as far as the criminal liability for the use of infringing copies in business is concerned. TRIPS Agreement (Article 61) only requires members to provide for criminal procedures and penalties to be applied in cases of willful trademark counterfeiting or copyright piracy on a commercial scale. The possession of an infringing copy of a copyright work for use in business is not willful copyright piracy on</p>

<p>1. Scope of Business End-user Possession Criminal Liability (Para. 8 of LC Paper No. CB(1)1792/04-05(05))</p> <p>- to maintain the existing scope of end-user criminal liability relating to the possession of an infringing copy of a copyright work for use in business to the four categories of copyright works (i.e., computer programs, musical recordings, TV dramas and movies)</p>			
	<p>Organizations / Individuals</p>	<p>Views / Concerns</p>	<p>Administration's Response</p>
	<ul style="list-style-type: none"> ● Hong Kong and International Publishers' Alliance ● Hong Kong Reprographic Rights Licensing Society ● Hong Kong Publishing Federation Limited ● International Federation of Reproduction Rights Organizations ● International Publishers Association ● Jing Kung Educational Press ● Modern Educational Network Limited ● Modern Educational Research Society, Ltd. ● Pilot Publishing Company Ltd. ● Pilot Publishers Services Ltd. ● Precise Publications Ltd. ● T. H. Lee Book Co., Ltd. ● Witman Publishing Co (HK) Ltd. ● Ying Lee Music Company 		<p>a commercial scale. Our proposal is therefore already above the standard required under Article 61 of TRIPS.</p>

<p>1. Scope of Business End-user Possession Criminal Liability (Para. 8 of LC Paper No. CB(1)1792/04-05(05))</p> <ul style="list-style-type: none"> - to maintain the existing scope of end-user criminal liability relating to the possession of an infringing copy of a copyright work for use in business to the four categories of copyright works (i.e., computer programs, musical recordings, TV dramas and movies) 			
	<p>Organizations / Individuals</p>	<p>Views / Concerns</p>	<p>Administration's Response</p>
<p>1.3</p>	<p><u>Liberal Party (LP)</u></p>	<p>LP considers that possession of infringing copies by individuals should not attract civil and criminal liability, but introduction of fine can be considered to deter consumers from purchasing pirated goods. It suggests the Government to deal with business end-user piracy and consumer piracy separately. It also asks the Administration to consider whether the new statutory defence in paragraph 11 of the LC Paper No. CB(1)1792/04-05(05) is sufficient.</p>	<p>The existing end-user possession criminal liability applies to <u>business</u> end-users only. Our proposal is to maintain the existing scope of business end-user possession offence and incorporate this temporary arrangement in the Copyright Ordinance. We have no plan to extend such liability to consumers possessing infringing copies for private and domestic use. Under the existing law, it is a defence for the person charged with business end-user possession offence to prove that he did not know and had no reason to believe that the copy in question was an infringing copy. In addition to the above "absence of knowledge" defence, we propose to introduce a specific "employee defence". However we would like to clarify that the new defence proposed at paragraph 11 is for the new business end-user copying/ distribution offence for printed works only.</p>

<p>2. New Criminal liability for copying/distribution of copyright infringing printed works (Paras. 9-15 of LC Paper No. CB(1)1792/04-05(05))</p> <p>- to introduce a new business end-user criminal offence against significant infringement activities involving the act of copying with a view to distributing or the act of distributing infringing copies of four types of printed work (i.e., books, newspapers, magazines and periodicals)</p>			
	<p>Organizations / Individuals</p>	<p>Views / Concerns</p>	<p>Administration's Response</p>
<p>2.1</p>	<p><u>Trade Organisations</u></p> <ul style="list-style-type: none"> ● The Chinese General Chamber of Commerce (CGCC) ● The Chinese Manufacturers' Association of Hong Kong (CMA) ● Hong Kong General Chamber of Commerce (HKGCC) ● Federation of Hong Kong Industries (FHKI) ● The Hong Kong Association of Banks <p><u>Educational Bodies</u></p> <ul style="list-style-type: none"> ● ABRIS Professional Learning Services ● The Chamber of Non-local Education Services ● Concern Group of the Education Sector (the Concern Group) ● Hong Kong Professional Teachers' Union (HKPTU) ● The Task Force on Copyright in Education (Heads of Universities Committee) 	<p>Except CGCC, all indicate objection to this proposal for the reasons that it may hamper dissemination of information, impede normal operation of their business, and affect the development of a knowledge-based economy. Some question the justifications for criminalizing business end-users and the severity of the infringement situation faced by the publication industry. Some consider that the existing offences targeting at the commercial sale of infringing copies and copy shop businesses are already adequate. LP points out that copying of printed works and possession of infringing copies by copying service business already attract civil and criminal liability respectively. Hence it is not necessary to cast the criminal net in relation to printed works over individual users and SMEs. If general users are to be covered under the criminal provision, only fine should be imposed as penalty.</p> <p>Only a few have commented on the numerical perimeters within which the concerned infringing acts would not attract the business end-user copying/distribution criminal liability ("safe harbour"). CMA opines that it is technically difficult to decide on the numerical value to determine the criminality of an act. CGCC suggests that the numerical thresholds to be 3-5% of the book copied. A few support the safe harbour concept but have not made any concrete</p>	<p>The proposed business end-user copying/distribution criminal liability is intended to target at serious infringements involving printed works in business. In formulating the proposed criminal provision, we have taken great care to address the public's concern on dissemination of information. In the light of the views expressed in these few months, we further propose to limit the proposed offence to regular or frequent infringements only and to lay down detailed numerical perimeters within which the concerned infringing acts will not attract criminal liability.</p> <p>The Administration's proposed perimeters of the "safe harbour" are set out in paragraph 7 in the main paper.</p>

<p>2. New Criminal liability for copying/distribution of copyright infringing printed works (Paras. 9-15 of LC Paper No. CB(1)1792/04-05(05))</p> <ul style="list-style-type: none"> - to introduce a new business end-user criminal offence against significant infringement activities involving the act of copying with a view to distributing or the act of distributing infringing copies of four types of printed work (i.e., books, newspapers, magazines and periodicals) 			
	<p>Organizations / Individuals</p>	<p>Views / Concerns</p>	<p>Administration's Response</p>
	<p><u>Social Welfare Organizations and Religious Bodies</u></p> <ul style="list-style-type: none"> ● The Hong Kong Council of Social Services (HKCSS) ● The Hong Kong Buddhist Association (HKBA) ● Hong Kong Christian Council (HKCC) <p><u>Liberal Party (LP)</u></p>	<p>suggestion on what the safe harbour should be. The Chamber of Non-local Education Services suggests using the percentage of a work copied to define the “safe harbour” if the proposed offence is to be enacted. LP remarks that the “safe harbour” should be drawn fairly and reasonably to ensure that the offence will not hamper the dissemination of information.</p> <p>All support in general our proposal to exempt educational establishments which are non-profit-making or receive Government subvention from the proposed business end-user copying/distribution offence, but most consider that a wider exemption should be provided for. CGCC suggests that exemption be confined for teaching purposes and be extended to charitable organizations. HKGCC disagrees with the discriminatory treatment between commercial and non-profit organizations.</p> <p>The Concern Group and HKPTU are of the view that private schools which are non-profit making should also be exempted. ABRIS Professional Learning Services and the Chambers of Non-local Education Services object to the proposed offence and discriminatory treatment in respect of exemption from the proposed offence against private or profit-making educational establishment. HKCC suggests exempting</p>	<p>Our proposed exemption applies to educational establishments which are non-profit-making or receive Government subvention. Hence, non-profit-making private schools will be qualified for exemption under our proposal. We do not recommend extending the scope of the proposed exemption having balanced the interests of copyright owners and those of users of copyright works.</p>

<p>2. New Criminal liability for copying/distribution of copyright infringing printed works (Paras. 9-15 of LC Paper No. CB(1)1792/04-05(05))</p> <p>- to introduce a new business end-user criminal offence against significant infringement activities involving the act of copying with a view to distributing or the act of distributing infringing copies of four types of printed work (i.e., books, newspapers, magazines and periodicals)</p>			
	Organizations / Individuals	Views / Concerns	Administration's Response
		<p>religious bodies from the proposed offence as well. HKCSS suggests that NGOs providing training to their users/ disadvantaged groups should also be exempted from the proposed offence. LP opines that the proposal not to exempt private schools from the proposed offence will seriously impair information flow and hinder the development of Hong Kong into a knowledge-based economy.</p>	
2.2	<p><u>Publication Industry</u></p> <ul style="list-style-type: none"> ● The Anglo-Chinese Textbook Publishers Organisation ● Aristo Educational Press Ltd. ● Canotta Publishing Co., Ltd. ● Chung Tai Educational Press ● The Commercial Press (HK) Ltd. ● Greenwood Press ● Hon Wing Book Co., Ltd. ● HK Copyright Licensing Association (HKCLA) ● Hong Kong Educational Publishers Association ● Hong Kong Educational Publishing Co. ● Hong Kong and International Publishers' Alliance ● Hong Kong Reprographic Rights Licensing Society ● Hong Kong Publishing 	<p>The main views expressed by book publishers on this proposal are summarized below -</p> <p>(a) suggest that the proposed business end-user copying/ distribution offence should apply to unauthorized copying and distribution of both digital versions and printed versions of books, reference materials and academic journals;</p> <p>(b) support the Government's proposal to treat academic journals on the same basis as books, rather than as periodicals;</p> <p>(c) suggest that a combination of thresholds be used as the "safe harbour" so that the user must meet all elements of the safe harbour (percentage of book copied, retail value of copied material, number of infringing copies made) in order to eliminate exposure to criminal liability. Their specific suggestion about the safe harbour is set out in para. 5 of</p>	<p>On book publishers' views, our responses are as follows –</p> <p>(a) We do not propose to apply the business end-user copying/distribution offence to digital versions of books, reference materials and academic journals as it may not be easy for users to tell if copyright restriction applies to these materials circulating on the Internet and most copyright owners in the publishing industry are not ready to extend their licensing schemes to cover works published in the electronic medium.</p> <p>(b) We will discuss with the publishers' associations as to how to define academic journals in the Bill.</p> <p>(c) We have considered the perimeters of the "safe harbour" suggested by the publication industry and consider them on the low side. Our proposed perimeters are set out in para. 7 of the main paper.</p>

<p>2. New Criminal liability for copying/distribution of copyright infringing printed works (Paras. 9-15 of LC Paper No. CB(1)1792/04-05(05))</p> <p>- to introduce a new business end-user criminal offence against significant infringement activities involving the act of copying with a view to distributing or the act of distributing infringing copies of four types of printed work (i.e., books, newspapers, magazines and periodicals)</p>			
	<p>Organizations / Individuals</p>	<p>Views / Concerns</p>	<p>Administration's Response</p>
	<p>Federation Limited</p> <ul style="list-style-type: none"> ● International Federation of Reproduction Rights Organizations ● International Publishers Association ● Jing Kung Educational Press ● Modern Educational Network Limited ● Modern Educational Research Society, Ltd. ● Pilot Publishing Company Ltd. ● Pilot Publishers Services Ltd. ● Precise Publications Ltd. ● T. H. Lee Book Co., Ltd. ● Witman Publishing Co (HK) Ltd. ● Ying Lee Music Company 	<p>the main paper.</p> <p>(d) concerned about the first two “statutory defence”, i.e. (i) the person charged has taken steps to obtain licence but failed to get response or timely response from copyright owners, and (ii) the copyright work concerned is out of print or not available for sale in the market and the copyright owner has refused to give a licence on reasonable commercial terms, as they consider that copyright owners should have the exclusive right to determine whether copying of their works should be licensed or not;</p> <p>(e) strongly object to exempting all non-profit making schools and schools subvented by the Government from the proposed criminal provision. Exemption would have been acceptable if the exemption –</p> <p>(i) expired after a finite time period;</p> <p>(ii) were accompanied by a government review of the practices of educational establishments and the extent to which they have entered into available licensing arrangements;</p> <p>(iii) applied only to bona fide uses in the</p>	<p>(d) The proposed statutory defence is drawn up having regard to the grave concern of the community that the proposed business end-user copying/distribution offence may affect dissemination of information. The statutory defence is only applicable to the proposed criminal liability but not the civil liability.</p> <p>(e) We do not propose any change to our proposed scope of exemption as we consider it appropriate having regard to the community's concerns about hindrance to classroom teaching on the one hand and the impact on copyright owners' interests on the other.</p>

2. New Criminal liability for copying/distribution of copyright infringing printed works (Paras. 9-15 of LC Paper No. CB(1)1792/04-05(05)) - to introduce a new business end-user criminal offence against significant infringement activities involving the act of copying with a view to distributing or the act of distributing infringing copies of four types of printed work (i.e., books, newspapers, magazines and periodicals)			
	Organizations / Individuals	Views / Concerns	Administration's Response
		<p>course of instruction;</p> <p>(iv) did not apply to infringement of textbooks or other materials marketed primarily for instructional uses; and</p> <p>(v) did not apply to infringement acts which prejudice the legitimate rights of copyright owners.</p> <p>HKCLA (representing 12 local newspapers) supports that the criminal offence targeting at printed works should be introduced against significant infringing acts which are frequent or regular; knowingly or intentionally committed; and cause financial loss to the copyright owners. Its specific suggestion about the safe harbour is at para. 5 of the main paper.</p>	<p>We have considered the perimeters of the "safe harbour" suggested by HKCLA and consider them on the low side. Our proposed perimeters are set out in para. 7 of the main paper.</p>

<p>3. Employees’ and certain professionals’ defence against end-user criminal liability (Paras. 16 and 17 of LC Paper No. CB(1)1792/04-05(05))</p> <ul style="list-style-type: none"> - to provide statutory defence against the business end-user criminal liability for employees and certain professionals and persons under specific circumstances 			
	<p>Organizations / Individuals</p>	<p>Views/ Concerns</p>	<p>Administration’s Response</p>
<p>3.1</p>	<p><u>Educational Bodies</u></p> <ul style="list-style-type: none"> ● Concern Group of the Education Sector (The Concern Group) ● Task Force on Copyright in Education (Heads of Universities Committee) (The Task Force) <p><u>Trade Organisation</u></p> <ul style="list-style-type: none"> ● Hong Kong Association of Banks <p><u>Liberal Party (LP)</u></p>	<p>All support the proposed employees’ defence and suggest that more persons should be entitled to invoke the defence. The Concern Group and the Task Force suggest that teachers with limited management responsibility and students who are student organization officials and teaching assistants should not be considered as those in a position to influence or decide on the acquisition or removal of the infringing copies for use in business. The HK Association of Banks suggests that the defence should also be available for the directors in large corporation since they may have no knowledge of the use of such copies or in a position to decide on the acquisition or removal of the infringing copies.</p>	<p>The proposed defence would be applicable to employees who are not in a position to influence or decide on the acquisition or removal of the infringing copies for use in business. Whether a specific employee can invoke the defence would depend on the circumstances of individual case.</p>
<p>3.2</p>	<p><u>Software and IT industry</u></p> <ul style="list-style-type: none"> ● Business Software Alliance (BSA) ● Hong Kong Information Technology Foundation (HKITF) <p><u>Trade Organisation</u></p> <ul style="list-style-type: none"> ● Hong Kong General Chamber of Commerce (HKGCC) 	<p>The software and IT industry is against the proposed employees’ defence because –</p> <p>(a) the existing “absence of knowledge” defence is already adequate;</p> <p>(b) there is no indication that the existing business end-user criminal liability provision operates unduly harshly upon lower-level employees;</p> <p>(c) a specific employees’ defence is not available in other jurisdictions;</p>	<p>We propose to introduce a specific employees’ defence having regard to public concern that criminal sanction may be too harsh for employees under certain circumstances as they are in a weak position to bargain with their employers to reject the use of infringing copies of copyright works in business for fear of losing their jobs. Under the proposed employees’ defence, whether an employee can invoke the defence would depend on whether he/ she is in a position to influence or decide on the acquisition or removal of the infringing copies for use in business, not the specific post he/ she is holding.</p>

<p>3. Employees’ and certain professionals’ defence against end-user criminal liability (Paras. 16 and 17 of LC Paper No. CB(1)1792/04-05(05)) - to provide statutory defence against the business end-user criminal liability for employees and certain professionals and persons under specific circumstances</p>			
	<p>Organizations / Individuals</p>	<p>Views/ Concerns</p>	<p>Administration’s Response</p>
		<p>(d) employers and employees should be treated alike in terms of their liability for infringements; and</p> <p>(e) the proposed employees’ defence will create loopholes in law enforcement.</p> <p>HKGCC does not agree with the proposed employees’ defence as it considers that both employers and employees should equally abide by the law. It opines that if there is unintentional infringement, (i.e., acting on other people’s instruction and not knowingly infringing), there is already an “absence of knowledge” defence under the existing Copyright Ordinance. Once there is knowledge that a criminal act will be committed, the influence of others should only be a mitigating factor, not a defence.</p> <p>BSA suggests that if it were determined that a specific employees’ defence should be introduced, employees need to be required to identify the person who actually provided the infringing copy to them before they can invoke the defence. The employees also need to establish that they are employees as defined under the Employment Ordinance and they are not directors, corporate officers, proprietors, or managers or employees having managerial functions or in a decision-making or advisory role.</p>	<p>We do not consider it desirable to provide in the law that employees are required to identify the person who actually provided the infringing copy to them as a prerequisite for invoking the defence because in some circumstances they may not be able to identify such a natural person. It is also too onerous on the employees if they are required to investigate who acquired the infringing copies and placed the copies for use in business.</p>

<p>4. Directors'/partners' criminal liability (Para. 18 of LC Paper No. CB(1)1792/04-05(05))</p> <ul style="list-style-type: none"> - to introduce a new criminal offence against the director(s) or partner(s) if a body corporate or partnership has done an act attracting the business end-user criminal liability unless there is evidence proving that the director(s) or partner(s) has not authorized the concerned infringing act to be done 			
	Organizations / Individuals	Views/ Concerns	Administration's Response
4.1	<p><u>Software and IT industry</u></p> <ul style="list-style-type: none"> ● Business Software Alliance (BSA) ● Hong Kong Information Technology Foundation (HKITF) <p><u>Publication Industry</u></p> <ul style="list-style-type: none"> ● The Anglo-Chinese Textbook Publishers Organisation ● Aristo Educational Press Ltd. ● Canotta Publishing Co., Ltd. ● Chung Tai Educational Press ● The Commercial Press (HK) Ltd. ● Greenwood Press ● Hon Wing Book Co., Ltd. ● Hong Kong Educational Publishers Association ● Hong Kong Educational Publishing Co. ● Hong Kong and International Publishers' Alliance ● Hong Kong Reprographic Rights Licensing Society ● Hong Kong Publishing Federation Limited 	<p>The software and IT industry welcomes the proposal and consider that it can encourage more responsible corporate governance. BSA opines that it would not be difficult for the directors or partners to prove that they have not authorized the use of infringing copies of copyright works for use in business because in Hong Kong they are typically the persons who approve budgets for the acquisition of company assets, including software licences. However, to prevent director/partners from taking disingenuous or cursory measures to escape from the proposed liability, BSA suggests that there must be an express provision stating that the court should take into account whether the company/partnership in question has put in place any software asset management process.</p> <p>Book publishers support the proposal so long as it will also be applicable to the proposed business end-user copying/distribution criminal offence for printed works.</p> <p>MPA supports the proposed director's / partner's liability.</p> <p>HKGCC supports the proposed director's / partner's liability but the proposal should only be</p>	<p>The proposal aims to promote corporate accountability and responsible governance. It will be applicable to all business end-user criminal offences, including the existing business end-user possession offence and the proposed business end-user offence concerning copying/ distribution of printed works.</p> <p>We expect that with the introduction of the proposed offence, businesses should put in place policies and practices to ensure that genuine copies of copyright works are used in business, and infringing copies of printed works should not be made for distribution or distributed to staff or participants of the business's activities. We will consider if suggestions about such policies and practices could be made available to businesses.</p> <p>We do not consider it appropriate to introduce an express provision in the law as suggested by BSA to require that the court should take into account whether the company/partnership in question has put in place any software asset management process. We believe that individual enterprises are best placed to determine what policies and practices they should put in place to guard against business end-user infringements having regard to their own</p>

<p>4. Directors'/partners' criminal liability (Para. 18 of LC Paper No. CB(1)1792/04-05(05))</p> <ul style="list-style-type: none"> - to introduce a new criminal offence against the director(s) or partner(s) if a body corporate or partnership has done an act attracting the business end-user criminal liability unless there is evidence proving that the director(s) or partner(s) has not authorized the concerned infringing act to be done 			
	<p>Organizations / Individuals</p>	<p>Views/ Concerns</p>	<p>Administration's Response</p>
	<ul style="list-style-type: none"> ● Jing Kung Educational Press ● Modern Educational Network Limited ● Modern Educational Research Society, Ltd. ● Pilot Publishing Company Ltd. ● Pilot Publishers Services Ltd. ● Precise Publications Ltd. ● T. H. Lee Book Co., Ltd. ● Witman Publishing Co (HK) Ltd. ● Ying Lee Music Company <p><u>Film Industry</u></p> <ul style="list-style-type: none"> ● Motion Pictures Association (MPA) <p><u>Trade Organisation</u></p> <ul style="list-style-type: none"> ● Hong Kong General Chamber of Commerce (HKGCC) 	<p>implemented with clear guidelines as to what will amount to sufficient proof that the directors/partners have not authorized the concerned infringing act to be done.</p>	<p>circumstances. The court will take into account the circumstances of individual cases when determining whether there is sufficient evidence to show that the director/partner in question has not authorized the concerned infringing act to be done.</p>

<p>4.</p>	<p>Directors'/partners' criminal liability (Para. 18 of LC Paper No. CB(1)1792/04-05(05))</p> <ul style="list-style-type: none"> - to introduce a new criminal offence against the director(s) or partner(s) if a body corporate or partnership has done an act attracting the business end-user criminal liability unless there is evidence proving that the director(s) or partner(s) has not authorized the concerned infringing act to be done 		
	<p>Organizations / Individuals</p>	<p>Views/ Concerns</p>	<p>Administration's Response</p>
<p>4.2</p>	<p><u>Trade Organisations</u></p> <ul style="list-style-type: none"> ● The Chinese Manufacturers' Association of Hong Kong (CMA) ● Federation of Hong Kong Industries (FHKI) <p><u>Social Welfare Organisation and Religious Body</u></p> <ul style="list-style-type: none"> ● The Hong Kong Councils of Social Service (HKCSS) ● Hong Kong Christian Council (HKCC) <p><u>Film Industry</u></p> <ul style="list-style-type: none"> ● Hong Kong Video Development Foundation (HKVDF) <p><u>Liberal Party (LP)</u></p>	<p>CMA, FHKI and LP are strongly against the proposed directors'/partner's liability for the following reasons –</p> <p>(a) Small and Medium Enterprises (SMEs), which account for the majority of the business establishments in Hong Kong, do not have the resources to ensure that their employees do not commit infringements. They do not have the necessary knowledge to distinguish whether a copyright work is infringing or genuine, neither do they have the resources and expertise to develop IP management system. Hence, the proposal will discourage investors from setting up businesses in Hong Kong;</p> <p>(b) The proposal contravenes the common law principle of presumption of innocence and imposes undue burden on directors and partners as they need to prove that they have not authorized the infringing acts in question to be done.</p> <p>CMA suggests that the Government should replace the proposal by other milder measures such as providing for civil remedies or only imposing a fine on the directors and partners.</p> <p>The HKCSS and HKCC suggest exempting</p>	<p>The proposed directors'/ partners' liability aim to promote corporate accountability and responsible governance against copyright infringements by business end-users. In the light of the views expressed to us in the last few months that our original proposal is too onerous as it applies to non-executive directors and partners, we propose to limit the scope of the proposed liability to cover only those directors, partners or persons that carry out chief executive functions of the body corporate or partnership. With the narrowed scope, the proposed offence will not apply to those non-executive directors of welfare organizations or religious bodies who do not carry out any chief executive functions.</p> <p>We would like to point out that the proposed offence places an evidential burden rather than a legal burden of proof on the defendant. The latter requires the defendant to prove, on the balance of probabilities, a matter which is essential to determine his guilt or innocence. An evidential burden, however, only requires the defendant to point to some evidence which casts doubt on the presumption. A similar provision against the use of unauthorized decoders in business can be found under the Broadcasting Ordinance (Cap. 562).</p> <p>The penalty provision for the existing business end-user possession offence stipulates that a person is</p>

4. Directors'/partners' criminal liability (Para. 18 of LC Paper No. CB(1)1792/04-05(05))
 - to introduce a new criminal offence against the director(s) or partner(s) if a body corporate or partnership has done an act attracting the business end-user criminal liability unless there is evidence proving that the director(s) or partner(s) has not authorized the concerned infringing act to be done

	Organizations / Individuals	Views/ Concerns	Administration's Response
		<p>directors of welfare organizations and religious bodies from the proposed directors'/partners' liability because –</p> <p>(a) most of the directors of welfare organizations and religious bodies take up the posts on a voluntary and community service basis and the proposed offence will deter these people from taking up the posts;</p> <p>(b) additional resources will be required to ensure that employees do not commit infringements.</p> <p>HKVDF is concerned that directors and partners may become criminally liable when their disgruntled staff set them up by acquiring infringing copies of copyright works for use in business. LP shares the same concern. HKVDF also suggests that only summons be issued against the company or directors or partners for any offence related to the use of infringing copies in business.</p>	<p>liable on conviction on indictment to a fine of \$50,000 in respect of each infringing copy and to imprisonment for 4 years. We will draw reference from this existing penalty provision in determining the penalty level for the proposed criminal offence against director(s) or partner(s).</p>

<p>5. Proof of infringing copies of computer programs in end-user liability cases (Para. 19 of LC Paper No. CB(1)1792/04-05(05))</p> <p>- to accumulate more enforcement experience before concluding whether and what legislative means should be introduced to facilitate proof of infringing nature of computer programs in business end-user possession criminal offence</p>			
	<p>Organizations / Individuals</p>	<p>Views/ Concerns</p>	<p>Administration's Response</p>
<p>5.1</p>	<p><u>Trade Organisation</u></p> <ul style="list-style-type: none"> ● Hong Kong General Chamber of Commerce <p><u>Educational Bodies</u></p> <ul style="list-style-type: none"> ● Concern Group of the Education Sector ● Task Force on Copyright in Education (Heads of Universities Committee) 	<p>All support our proposal to accumulate more enforcement experience and not to introduce a new requirement on businesses to keep records of licensed computer programmes.</p>	
<p>5.2</p>	<p><u>Software and IT industry</u></p> <ul style="list-style-type: none"> ● Business Software Alliance (BSA) ● Hong Kong Information Technology Foundation (HKITF) 	<p>The software and IT industry suggest that the Administration should reconsider imposing a requirement on businesses to keep records of purchase receipts or licences of software to facilitate the proof of infringing nature of computer programmes found in business end-user piracy cases. BSA further suggests including a provision in the Copyright Ordinance to expressly allow the court to take into account all circumstances of the case in determining whether a computer program found in a user's computer is an infringing copy, including but not limited to the fact of whether the user in question has maintained proper records as required under the Companies Ordinance and the Inland Revenue Ordinance and related guidelines issued thereunder.</p>	<p>The majority of the submissions received in the consultation exercise that was completed early this year objected to amending the legislation to facilitate the proof of the infringing nature of computer programs including the requirement to keep records. Having regard to the views received, we propose to accumulate more enforcement experience before concluding whether and what legislative means should be introduced.</p>

<p>6. Fair dealing for education and public administration (Paras. 20 to 25 of LC Paper No. CB(1)1792/04-05(05)) - to exempt from copyright restriction “fair dealing” with a copyright work for the purposes of education and public administration</p>			
	<p>Organizations / Individuals</p>	<p>Views/ Concerns</p>	<p>Administration’s Response</p>
<p>6.1</p>	<p><u>Educational Bodies</u></p> <ul style="list-style-type: none"> ● The Chamber of Non-local Education Services ● Concern Group of the Education Sector (the Concern Group) ● Hong Kong Professional Teachers’ Union (HKPTU) ● The Task Force on Copyright in Education (Heads of Universities Committee) (the Task Force) <p><u>Trade Organisations</u></p> <ul style="list-style-type: none"> ● Hong Kong General Chamber of Commerce (HKGCC) ● The Hong Kong Association of Banks <p><u>Religious Body</u></p> <ul style="list-style-type: none"> ● The Hong Kong Buddhist Association (HKBA) <p><u>Liberal Party (LP)</u></p>	<p>The education sector generally welcomes the Administration’s proposal to introduce a fair dealing provision for education. Regarding the four factors that the court should take into account when considering whether or not certain acts constitute fair dealing (i.e., the purpose and character of the dealing; the nature of the work; the amount and substantiality of the portion dealt with in relation to the work as a whole; and the effect of the dealing upon the potential market for or value of the work), the Concern Group and the Task Force opine that only if all of the four factors are in favour of the copyright owners, the copyright work users may then be found liable in the court. The HKPTU suggests that the court should only consider the four factors and no other factors in determining whether a dealing of a work is fair, and that clearer guidance about fair dealing should be provided.</p> <p>The education sector supports the Administration’s position not to lay down in the law the implementation of technological measures requested by some copyright owners as a pre-requisite for the application of the fair dealing provision to the digital environment. They opine that the fair dealing provision should be technologically neutral so that teachers may post copyright materials onto the school intranets for teaching and disseminate information to students for interactive teaching and</p>	<p>Under the proposed fair dealing provisions for education and public administration, the court should take into account all the four factors and may take into account other factors as it considers relevant, i.e. the factors set out are not meant to be exhaustive but they should be considered by the court. The court will evaluate and weigh the four factors and other relevant factors having regard to the specific facts and circumstances of individual cases. This approach is in line with the fair use and fair dealing systems in the US and Singapore.</p> <p>We would like to reiterate that the Copyright Ordinance is technology-neutral in that the protection conferred on copyright works as well as the copyright exemption provisions should apply to works stored in both physical and electronic media.</p> <p>In the public consultation on the review of certain provisions of the Copyright Ordinance that was completed early this year, views were mixed as to whether a general non-exhaustive copyright exemption regime should be introduced. On balance, we consider it important to give clear guidance to both copyright work users and owners regarding the particular purpose and circumstances under which an act might be done without infringing copyright. We therefore propose to retain the existing permitted act provisions in the Copyright Ordinance with some improvements to be made, and</p>

<p>6. Fair dealing for education and public administration (Paras. 20 to 25 of LC Paper No. CB(1)1792/04-05(05)) - to exempt from copyright restriction “fair dealing” with a copyright work for the purposes of education and public administration</p>			
	<p>Organizations / Individuals</p>	<p>Views/ Concerns</p>	<p>Administration’s Response</p>
		<p>learning in this digital era.</p> <p>HKGCC has no objection to the proposed fair dealing provisions for education and public administration, but notes that the issue of fair dealing for business sector is not addressed in the current package. It calls for self-regulatory guidelines to be established to help provide guidance to the business sector. The Hong Kong Association of Banks supports the introduction of a non-exhaustive copyright exemption regime which would allow more flexibility.</p> <p>HKBA would like to know more about the scope and context of the fair dealing provision for education.</p> <p>LP would like to know how the four factors are to be interpreted. It also suggests extending the fair dealing provision for public administration to cover office of LegCo/ District Council members, political parties and public policy think tanks.</p>	<p>introduce specific fair dealing provisions for education and public administration purposes.</p> <p>We note LP’s request to extend the scope of the fair dealing provision for public administration. However, copyright owners are already concerned about whether the proposed provision will lead to abuse of their works. Further widening the parties that can benefit from this provision and the circumstances under which the provision may apply will further increase copyright owners’ concerns. Having balanced the interests of copyright owners, we consider the existing scope of the proposed provision appropriate.</p>
6.2	<p><u>Publication Industry</u></p> <ul style="list-style-type: none"> ● The Anglo-Chinese Textbook Publishers Organisation ● Aristo Educational Press Ltd. ● Canotta Publishing Co., Ltd. ● Chung Tai Educational Press ● The Commercial Press (HK) 	<p>Copyright owners generally welcome our decision not to introduce a general non-exhaustive fair dealing copyright exemption regime in Hong Kong. However, they are concerned about how the proposed fair dealing provisions for education and public administration would be formulated and these provisions may give rise to abusive use of</p>	<p>We would like to reiterate that dealing with a work for the purposes of education or public administration purpose under the specified circumstances would only be exempted if the dealing constitutes fair dealing. The court should take into account the four factors and other relevant factors when determining whether certain acts constitute fair</p>

6. Fair dealing for education and public administration (Paras. 20 to 25 of LC Paper No. CB(1)1792/04-05(05)) - to exempt from copyright restriction “fair dealing” with a copyright work for the purposes of education and public administration			
	Organizations / Individuals	Views/ Concerns	Administration’s Response
	Ltd. ● Greenwood Press ● Hon Wing Book Co., Ltd. ● Hong Kong Educational Publishers Association ● Hong Kong Educational Publishing Co. ● Hong Kong and International Publishers’ Alliance ● Hong Kong Reprographic Rights Licensing Society ● Hong Kong Publishing Federation Limited ● International Publishers Association ● Jing Kung Educational Press ● Modern Educational Network Limited ● Modern Educational Research Society, Ltd. ● Pilot Publishing Company Ltd. ● Pilot Publishers Services Ltd. ● Precise Publications Ltd. ● T. H. Lee Book Co., Ltd. ● Witman Publishing Co (HK) Ltd. ● Ying Lee Music Company	their works. Specifically, nearly all submissions from the publication industry suggest that the fair dealing provisions for education and public administration should be codified by stating that no exception may be applied (a) in other than special cases; (b) in a way that conflicts with a normal exploitation of the work; or (c) in a way that unreasonably prejudices the legitimate interests of the right holders. Moreover, the fair dealing provisions should not be applicable when the user knew or ought to have been aware that licenses were available to cover the activity in question, or the law should specify that a detrimental effect on the potential market for or value of the work (i.e., one of the four factors that the court should take into account when considering whether an act constitutes fair dealing or not) may be presumed whenever such licences are available. Furthermore, they request that there should be express provision recognizing that school’s unauthorized use for instructional purposes of any substantial portion of a textbook or other material marketed for instructional purposes will ordinarily have a significant detrimental effect on the potential market for such a work.	dealing or not. We will take into account copyright owners’ concerns about abuse when we draft the detailed provisions. We do not consider it necessary to codify the fair dealing provisions for education and public administration with the three conditions as proposed by the publication industry. The fair dealing provisions will lay down the specific situations under which the provisions will be applicable (i.e., special cases). Moreover, the existing section 37(3) of the Copyright Ordinance already provides that any copyright exception should be subject to the primary consideration that the concerned 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. The proposed fair dealing provisions will also be subject to such primary consideration. Besides, we disagree with the book publishers that the fair dealing provisions would only apply if no licences covering the concerned activities exist. The existing fair dealing provisions for research and private study, and for criticism, review and news reporting in the Copyright Ordinance do not have such a requirement. Nor does this licensing restriction exist in the fair use and fair dealing regimes in the US and Singapore. Also, we do not consider it appropriate to explicitly set out what activities are presumed to have detrimental effect on the potential market for or value

<p>6. Fair dealing for education and public administration (Paras. 20 to 25 of LC Paper No. CB(1)1792/04-05(05)) - to exempt from copyright restriction “fair dealing” with a copyright work for the purposes of education and public administration</p>			
	<p>Organizations / Individuals</p>	<p>Views/ Concerns</p>	<p>Administration’s Response</p>
	<p><u>Software and IT Industry</u></p> <ul style="list-style-type: none"> ● Business Software Alliance (BSA) ● Hong Kong Information Technology Federation (HKITF) <p><u>Film Industry</u></p> <ul style="list-style-type: none"> ● Hong Kong Video Development Foundation ● Motion Pictures Association <p><u>Music Industry</u></p> <ul style="list-style-type: none"> ● International Federation of the Phonographic Industry (HK Group) Ltd (IFPI) 	<p>BSA is concerned that the proposed fair dealing provision for education may be misinterpreted to include profit-making educational institutions such as tutorial and computer training centres and this would not be aligned with the Administration’s intent.</p> <p>Copyright owners in the publication, film and music industries continue to express grave concern over the application of the fair dealing provision for education to their copyright works in the digital environment. They are afraid that schools will become a safe haven for on-line piracy activities. This will cause disincentive for investment in creative works in Hong Kong. They maintain that there should be requirement in the law that technological measures encompassing access controls to restrict access to the materials, and use controls to prevent or inhibit unauthorized downloading, printing or further dissemination of the materials should be put in place. They disagree with the Administration’s views that such technological measures are not currently available or too expensive.</p> <p>On the fair dealing provision for public administration, book publishers consider that there is insufficient justification for this provision and that it could cripple the Hong Kong market for legal materials, medical publications and reference</p>	<p>of the work concerned. The court should be left to determine whether there is detrimental effect having regard to the specific circumstances of individual cases.</p> <p>We wish to clarify that the existing permitted act provisions for education apply to the educational establishments under Schedule 1 to the Copyright Ordinance which include both non profit-making and profit-making educational establishments. The same will also apply to the proposed fair dealing provision for education. We do not think that the use of pirated software can be justified under the proposed fair dealing provision as such an act can hardly constitute fair dealing. To be consistent with the existing fair dealing provisions in the Copyright Ordinance, we consider that the proposed fair dealing provisions for education and public administration should also apply to all categories of copyright works including computer programs.</p> <p>We have strong reservations about copyright owners’ request that schools should put in place technological measures before the proposed fair dealing provision for education purposes can apply to copyright works in the digital environment as the measures requested by book publishers are complicated, not readily available in the market and very expensive. The inclusion of the requirement on technological measures as suggested by copyright owners may</p>

6. Fair dealing for education and public administration (Paras. 20 to 25 of LC Paper No. CB(1)1792/04-05(05))		
- to exempt from copyright restriction “fair dealing” with a copyright work for the purposes of education and public administration		
Organizations / Individuals	Views/ Concerns	Administration’s Response
	books. BSA also questions the need for the fair dealing provision for public administration in relation to software and opines that it would create confusion and ambiguity in the law.	<p>render the fair dealing provision not applicable to the fair use of digital works in secondary and primary schools as they are unlikely to have the resources and technical support to adopt the technological measures so required.</p> <p>We do not think that acquisition of reference books for normal operation in the course of public administration could be displaced by the proposed fair dealing provision for public administration since the proposed provision only applies in cases of efficient administration of urgent business.</p>

<p>7. Improvements to the existing permitted act provisions and introduction of new permitted act provisions as proposed by the Administration in 2002 (Paras. 26 to 31 of LC Paper No. CB(1)1792/04-05(05))</p> <ul style="list-style-type: none"> - to extend the scope of some existing “permitted acts” for education - to modify the existing “permitted acts” for research or private study - to prescribe conditions under which libraries may make replacement copies of a copyright work for archiving purposes and involving storing the work in a different medium - to set aside certain proposals relating to “permitted acts” put forward to the Panel in 2002 and to take forward other proposals 							
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	<ul style="list-style-type: none"> ● Canotta Publishing Co., Ltd. ● Chung Tai Educational Press ● The Commercial Press (HK) Ltd. ● Greenwood Press ● Hong Kong Educational Publishers Association ● Hon Wing Book Co., Ltd. ● Hong Kong Educational Publishing Co. ● Hong Kong and International Publishers’ Alliance ● Hong Kong Reprographic Rights Licensing Society ● Hong Kong Publishing Federation Limited ● International Publishers Association ● Jing Kung Educational Press ● Modern Educational Network Limited ● Modern Educational Research Society, Ltd. ● Pilot Publishing Company Ltd. ● Pilot Publishers Services Ltd. ● Precise Publications Ltd. 	<p><u>Medium shifting by libraries</u></p> <p>The Concern Group, the Task Force (both also represent library associations and university libraries) and LP welcome our proposal to prescribe conditions for libraries to make replacement copies involving medium shifting. The Concern Group and the Task Force however opine that the current proposal may not be adequate to address the needs of libraries because –</p> <p>(a) it is the librarian’s experience that authorization, if granted, by copyright owners may not be secured within the required time-period; and</p> <p>(b) there are certain situations in which librarians may need to make replacement copies in addition to archiving purposes, such as (i) to use the copy in day-to-day business and leave the first generation original untouched for as long as possible; and (ii) to copy an item from another source when the home copy has been lost and cannot be replaced in the market place or when it is irretrievably damaged.</p>	<p>We will carefully consider the concerns expressed by education and library users, as well as copyright owners. A delicate balance between the interests of the two sides will need to be struck when developing the conditions to be prescribed. The conditions will be prescribed by regulations under section 46(1) of the Copyright Ordinance which will be pursued in a separate exercise from the amendment Bill to be introduced to LegCo early next year.</p>

<p>7. Improvements to the existing permitted act provisions and introduction of new permitted act provisions as proposed by the Administration in 2002 (Paras. 26 to 31 of LC Paper No. CB(1)1792/04-05(05))</p> <ul style="list-style-type: none"> - to extend the scope of some existing “permitted acts” for education - to modify the existing “permitted acts” for research or private study - to prescribe conditions under which libraries may make replacement copies of a copyright work for archiving purposes and involving storing the work in a different medium - to set aside certain proposals relating to “permitted acts” put forward to the Panel in 2002 and to take forward other proposals 			
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	<ul style="list-style-type: none"> ● T. H. Lee Book Co., Ltd. ● Witman Publishing Co (HK) Ltd. ● Ying Lee Music Company <p><u>Film Industry</u></p> <ul style="list-style-type: none"> ● Motion Pictures Association (MPA) <p><u>Broadcasting industry</u></p> <ul style="list-style-type: none"> ● Cable and Satellite Broadcasting Association of Asia (CASBAA) 	<p>Book publishers are of the view that the proposal would undermine the principle that the decision to release a particular product in a new medium should be left to the marketplace. It is also concerned about leaving to the court to determine whether a library’s act is infringing or not according to whether publisher’s response to a user is “timely”.</p> <p>MPA comments that it is essential that no format or medium shifting of any nature be permitted since this would undermine the exclusive rights of the copyright holder.</p> <p><u>Improvements to the permitted acts put forward by the Administration in 2002</u></p> <p>The education sector welcomes our proposal to remove the existing restriction that the permitted acts of recording of broadcasts and cable programmes and reprographic copying of passages from published works by educational establishments will not be permitted if there are relevant licensing schemes granting authorization of the works concerned.</p>	<p>The proposed amendment aims to address the concern of copyright work users that this licensing condition would disallow copying of a reasonable part of a work for educational purposes, which should be a permitted act. We have looked at the relevant permitted act provisions in the copyright laws in other common law jurisdictions and found that such a condition exist in the copyright law in the UK, but not in many other places including Singapore, Canada and Australia.</p> <p>We would like to point out that a licence would still be required by educational establishments for</p>

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	Organizations / Individuals	Views/ Concerns	Administration’s Response
		<p>Book publishers however are strongly against our proposal to remove the above restriction on reprographic copying of passages from published works by educational establishments. They opine that Hong Kong should continue to recognize that the best and most efficient way to manage educational uses of copyright works is to encourage voluntary agreements between right holders and schools. Removal of the current restriction would enable schools to copy without charge and without liability to an extent that is now covered by licences which are now readily available to schools. This would remove the prime incentive for educational institutions to obtain licences.</p> <p>HKCSS supports early introduction of the permitted act for persons with a print disability. CASBAA and LP support the Administration’s proposal not to exempt hotel guest rooms from paying copyright royalties for radio or television broadcasts.</p>	<p>copying beyond a reasonable extent.</p>

<p>8. Circumvention of Technological Measures for Copyright Protection (Paras. 32 to 34 and 36 of LC Paper No. CB(1)1792/04-05(05))</p> <ul style="list-style-type: none"> - to extend existing civil rights of copyright owners against circumvention of technological measures used to protect copyright works from copying infringement to cover access control measures and the act of circumvention - to introduce a new criminal offence against commercial dealing of devices, products or components and the provision of services on a commercial scale which circumvent technological measures applied to a copy of a copyright work 		
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<p>8.1</p> <p><u>Trade Organisation</u></p> <ul style="list-style-type: none"> ● The Chinese Manufacturers' Association of Hong Kong (CMA) <p><u>Educational Bodies</u></p> <ul style="list-style-type: none"> ● Concern Group of the Education Sector (the Concern Group) ● The Task Force on Copyright in Education (Heads of Universities Committee) (the Task Force) <p><u>Liberal Party (LP)</u></p>	<p>CMA objects to the introduction of criminal liability for commercial dealing of circumvention devices and the introduction of civil liability associated with circumvention of access control measures because the Copyright Ordinance should aim at protecting copyright but not the measures/ devices used to protect copyright. The proposed liabilities may also lead to unintended consequences.</p> <p>The Concern Group and the Task Force welcome the proposed exemption for research into cryptography but suggest that the exemption should also cover other areas of research such as computer security. They strongly oppose that the proposed exemption would not apply if the concerned act of circumvention or the subsequent publication of the research information would prejudicially affect copyright owners because the mere publication of the research information does not make researcher a party to the subsequent act of circumvention; and the life-blood of any university lies in research and the publication and dissemination of research findings. They suggest that only research papers which set out intentionally to create an adverse impact on the interest of a copyright work should be subject to civil liability under the provision and there should be no penalization if no commercial</p>	<p>We propose to narrow the scope of the proposals and provide more exemptions from the new liabilities as set out in paragraphs 15 and 17 to 19 of the main paper. The educational bodies' suggestions to provide broader exemptions similar to those set out in the US Copyright Act have been taken onboard. Exemptions will also be provided for the purpose of using parallel imported items of copyright works. This should address the concern relating to the use of digital works to which area coding restriction applies and which are legally purchased abroad.</p> <p>As regards the exemption for research into cryptography, we consider the proposed formulation appropriate, having balanced the need to ensure that the protection will not hinder scientific research and the interest of copyright owners.</p>

<p>8. Circumvention of Technological Measures for Copyright Protection (Paras. 32 to 34 and 36 of LC Paper No. CB(1)1792/04-05(05))</p> <ul style="list-style-type: none"> - to extend existing civil rights of copyright owners against circumvention of technological measures used to protect copyright works from copying infringement to cover access control measures and the act of circumvention - to introduce a new criminal offence against commercial dealing of devices, products or components and the provision of services on a commercial scale which circumvent technological measures applied to a copy of a copyright work 		
Organizations / Individuals	Views/ Concerns	Administration's Response
	<p>benefit is involved. They also suggest providing for a scope of exemption no less than that under section 1201 of the US Copyright Act which includes –</p> <ul style="list-style-type: none"> (a) reverse engineering; (b) encryption research; (c) circumvention of technological protection of personally identifying information; and (d) security testing. <p>They also suggest that teachers and librarians should be allowed to circumvent technological access controls for using digital works legally purchased abroad.</p> <p>LP has no objection to the proposal but remarks that the proposals should not assist development of monopoly, hinder the making of backup or private copies by end-users, or hinder technological development.</p>	
<p>8.2 <u>Software, Game and IT Industries</u></p> <ul style="list-style-type: none"> ● Business Software Alliance (BSA) ● Entertainment Software Association (ESA) 	<p>BSA, ESA and HKITF support the proposals concerning anti-circumvention of technological measures.</p> <p>BSA seeks to clarify if all the remedies under the proposals would also be available to exclusive</p>	<p>We would like to clarify that the remedies under the proposals will also be available to exclusive licensees of copyright owners.</p> <p>On ESA's comments at points (a), (b) and (c) in the middle column, we will take them into account as</p>

<p>8. Circumvention of Technological Measures for Copyright Protection (Paras. 32 to 34 and 36 of LC Paper No. CB(1)1792/04-05(05))</p> <ul style="list-style-type: none"> - to extend existing civil rights of copyright owners against circumvention of technological measures used to protect copyright works from copying infringement to cover access control measures and the act of circumvention - to introduce a new criminal offence against commercial dealing of devices, products or components and the provision of services on a commercial scale which circumvent technological measures applied to a copy of a copyright work 			
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	<ul style="list-style-type: none"> ● Hong Kong Information Technology Federation (HKITF) <p><u>Film Industry</u></p> <ul style="list-style-type: none"> ● Hong Kong Video Development Foundation (HKVDF) ● Motion Pictures Association (MPA) <p><u>Music Industry</u></p> <ul style="list-style-type: none"> ● International Federation of the Phonographic Industry (HK Group) Ltd (IFPI) <p><u>Trade Organisation</u></p> <ul style="list-style-type: none"> ● Hong Kong General Chamber of Commerce (HKGCC) <p><u>Broadcasting Industry</u></p> <ul style="list-style-type: none"> ● Cable and Satellite Broadcasting Association of Asia (CASBAA) 	<p>licensees of copyright owners.</p> <p>ESA makes the following specific comments –</p> <p>(a) there is no need to add the adjective “effective” before “technological measures” as “effective” has a meaning of “having an intended or expected effect” and this meaning is already reflected in the interpretation of “copy-protection” under existing section 273(4) of the Copyright Ordinance;</p> <p>(b) the criminal provision should be able to cover scenarios in which circumvention devices and services are offered as business incentives, e.g. circumvention devices installed and circumvention services offered as “bonus” accompaniments to the purchase of game consoles;</p> <p>(c) the criminal provision should also cover “possession of circumvention devices for the purposes of trade or business”; and</p> <p>(d) prohibition against acts of circumvention and trafficking in circumvention devices and services should be separate from the question</p>	<p>appropriate in the drafting stage. We however disagree with ESA’s comments at (d). Users of copyright work reflect to us that they should not attract any civil liability pertaining to the act of circumvention if they are to circumvent technological measures to gain access to a copyright work for permitted acts. As our intention to introduce anti-circumvention measures is to protect the copyright works rather than the measures per se, we suggest at paragraph 17 of the main paper that the civil liability for the act of circumvention should only apply if the person who commits the act of circumvention knows or has reasonable grounds to know that he is pursuing a circumvention objective and with a view to inducing, enabling, facilitating or concealing a copyright infringement. For the proposed criminal provision, it mainly combats commercial dealing of circumvention devices, products or components and the commercial provision of circumvention services. We acknowledge that it may not be appropriate to require knowledge of infringement to invoke the liability.</p>

<p>8. Circumvention of Technological Measures for Copyright Protection (Paras. 32 to 34 and 36 of LC Paper No. CB(1)1792/04-05(05))</p> <ul style="list-style-type: none"> - to extend existing civil rights of copyright owners against circumvention of technological measures used to protect copyright works from copying infringement to cover access control measures and the act of circumvention - to introduce a new criminal offence against commercial dealing of devices, products or components and the provision of services on a commercial scale which circumvent technological measures applied to a copy of a copyright work 			
	<p>Organizations / Individuals</p>	<p>Views/ Concerns</p>	<p>Administration’s Response</p>
		<p>of whether there is an underlying infringement.</p> <p>HKVDF and IFPI suggest that the technological measures to be protected should include access control, protection process and copy control mechanisms, and those which serve as a common technological platform for a variety of copyright works.</p> <p>IFPI further suggests that we should effect the following amendments to make our Copyright Ordinance in line with the effective level of protection for technological protection measures mandated by the World Intellectual Property Organization Performances and Phonograms Treaty (WPPT) –</p> <ul style="list-style-type: none"> (a) introduce criminal liability for the acts of dealing with devices/publishing information on circumvention; (b) introduce civil and criminal liability for the act of circumvention; and (c) omit the “knowledge of intent to infringe copyright” requirement under the existing 	<p>Our intention is that the effective technological measures should cover access control and copy protection measures. This is in line with the meaning of technological measures for the anti-circumvention provisions of the copyright laws in other jurisdictions.</p> <p>We would like to point out that Article 18 of the WPPT only stipulates that Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by performers or producers of phonograms in connection with the exercise of their rights under WPPT and that restrict acts, in respect of their performances or phonograms, which are not authorized by the performers or the producers of phonograms concerned or permitted by law. WPPT does not require specifically that the civil and criminal provisions as suggested by IFPI should be implemented.</p> <p>Our refined proposal on the criminal offence against the dealing of circumvention devices, products or components and the commercial provision of circumvention services have struck a delicate balance</p>

<p>8. Circumvention of Technological Measures for Copyright Protection (Paras. 32 to 34 and 36 of LC Paper No. CB(1)1792/04-05(05))</p> <ul style="list-style-type: none"> - to extend existing civil rights of copyright owners against circumvention of technological measures used to protect copyright works from copying infringement to cover access control measures and the act of circumvention - to introduce a new criminal offence against commercial dealing of devices, products or components and the provision of services on a commercial scale which circumvent technological measures applied to a copy of a copyright work 			
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		<p>section 273(2) of the Copyright Ordinance which provides civil remedies to copyright owners against the act of dealing with circumvention devices.</p> <p>IFPI also opines that any exemptions to the circumvention of technological measures be limited to academic research for non-commercial purpose and only to the extent as not to cause any prejudice to the normal exploitation of the work in the digital environment by the right holders.</p> <p>MPA suggests providing criminal penalties to cover access control measures and acts of circumvention. It supports the proposed new offence but remarks that dealings to be caught under the new offence should not be confined to those done for commercial or profit-making purpose.</p> <p>HKGCC has no objection to imposing civil and criminal liabilities for circumvention done for commercial purposes and agrees that exemption be provided for bona fide scientific research. It expresses sympathy with the audio-visual sector's proposal to criminalize fraudulent reception of cable programmes by consumers, and calls on the Administration to conduct consultation on</p>	<p>between the need to combat circumvention activities for copyright protection, and the community's grave concern that any anti-circumvention measures should not have any inadvertent effect of affecting consumers' legitimate use of copyright works. We do not consider it appropriate to introduce any criminal sanctions against the publication of information on circumvention or the acts of circumvention. Besides, the "knowledge of intent to infringe copyright" requirement under the existing section 273(2) of the Copyright Ordinance is in line with our aim to protect copyright rather than technological measures per se. Copyright owners have successfully sought civil remedies from the dealers of circumvention devices under this provision before. We do not see any strong reason why this requirement should be omitted from the civil provision.</p> <p>In the light of the suggestions of user groups and the education sector reflected to us in the last few months, we suggest that we should introduce broader exemptions from the civil liability and where appropriate, the criminal liability, in respect of circumvention activities (paras. 18 and 19 of the main paper). We will explore with copyright owners suitable formulation to give effect to these</p>

<p>8. Circumvention of Technological Measures for Copyright Protection (<i>Paras. 32 to 34 and 36 of LC Paper No. CB(1)1792/04-05(05)</i>)</p> <ul style="list-style-type: none"> - to extend existing civil rights of copyright owners against circumvention of technological measures used to protect copyright works from copying infringement to cover access control measures and the act of circumvention - to introduce a new criminal offence against commercial dealing of devices, products or components and the provision of services on a commercial scale which circumvent technological measures applied to a copy of a copyright work 			
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		<p>combating the problem of "cable piracy".</p> <p>CASBAA supports the introduction of a new criminal offence against manufacturing or selling of devices designed to defeat technological measures used by copyright owners to protect their works against infringement. It suggests criminalization of end-user possession of circumvention devices to protect copyright pay-TV materials.</p>	<p>exemptions.</p> <p>We wish to clarify that the proposed offence is not intended to cover commercial dealing of unauthorized decoders for reception of licensed pay TV services which already attracts civil and criminal liabilities under the Broadcasting Ordinance. Using such devices for commercial purposes also attracts both civil and criminal liabilities while using them for domestic purposes attracts civil liability. The Administration considers that the existing legal measures are proportionate to the actual problem in Hong Kong. The LegCo ITB Panel noted the Administration's position at its meeting on 11 July 2005. It requested the Administration to monitor the global trend of regulatory practices against pirated viewing of pay TV programmes and update the Panel where necessary. In addition, the Copyright Ordinance provides that recording for private and domestic use of a broadcast or cable programme solely for the purpose of enabling the programmes to be viewed or listened to at a more convenient time does not infringe the copyright in the broadcast or cable programme or in any work included in it. Taking into account the criminal sanction already imposed by the Broadcasting Ordinance on commercial dealing of unauthorized</p>

8. Circumvention of Technological Measures for Copyright Protection (Paras. 32 to 34 and 36 of LC Paper No. CB(1)1792/04-05(05))

- to extend existing civil rights of copyright owners against circumvention of technological measures used to protect copyright works from copying infringement to cover access control measures and the act of circumvention
- to introduce a new criminal offence against commercial dealing of devices, products or components and the provision of services on a commercial scale which circumvent technological measures applied to a copy of a copyright work

	Organizations / Individuals	Views/ Concerns	Administration's Response
			decoders and the need to ensure that the community's legitimate use of broadcast and cable programmes for private time shifting purposes will not be impeded, the proposed offence should not apply to effective technological measures that have the effect of controlling the use of a broadcast or cable programme.

<p>9. Circumvention of Technological Measures for Copyright Protection (Paras. 35 to of LC Paper No. CB(1)1792/04-05(05))</p> <p>- to provide that the copyright owner or his exclusive licensee has the same civil right against interference with “rights management information” as he has in respect of an infringement of copyright</p>			
	<p>Organizations / Individuals</p>	<p>Views/ Concerns</p>	<p>Administration’s Response</p>
<p>9.1</p>	<p><u>Film Industry</u></p> <ul style="list-style-type: none"> ● Hong Kong Video Development Foundation (HKVDF) ● Motion Pictures Association (MPA) <p><u>Music Industry</u></p> <ul style="list-style-type: none"> ● International Federation of the Phonographic Industry (HK Group) Ltd (IFPI) 	<p>HKVDF and IFPI support the proposal.</p> <p>MPA suggests that criminal sanctions (in addition to civil remedies) be provided against the interference with rights management information (RMI).</p> <p>IFPI suggests that any exemptions of the interference with RMI be limited to academic research for non-commercial purpose and only to the extent as not to cause any prejudice to the normal exploitation of the work in the digital environment by the right holders.</p>	<p>We wish to point out that civil remedies are already provided for against the interference with RMI. We do not consider it justified or necessary to introduce criminal sanctions against such interference activities.</p> <p>There is no exemption provided for interference with RMI and we do not propose any new exemption. However, to be consistent with the wording of the relevant Articles in the WPPT and the WIPO Copyright Treaty, section 274 of the Copyright Ordinance will be amended so that a person who interferes with rights management information may attract civil liability only if he knows the act will induce, enable, facilitate or conceal an infringement.</p>

<p>10. Parallel Importation of Copyright Works (Paras. 37-38 of LC Paper No. CB(1)1792/04-05(05))</p> <p>- to maintain the existing restrictions on parallel importation of copyright works, but remove the criminal and civil liability for importation and possession of such items by educational establishments and libraries for their educational and library uses</p>			
	<p>Organizations / Individuals</p>	<p>Views/ Concerns</p>	<p>Administration’s Response</p>
<p>10.1</p>	<p><u>Educational Bodies</u></p> <ul style="list-style-type: none"> ● Concern Group of the Education Sector (the Concern Group) ● The Task Force on Copyright in Education (Heads of Universities Committee) (the Task Force) <p><u>Trade Organisations</u></p> <ul style="list-style-type: none"> ● The Chinese Manufacturers’ Association of Hong Kong (CMA) ● Federation of Hong Kong Industries (FHKI) ● Hong Kong General Chamber of Commerce (HKGCC) <p><u>Liberal Party (LP)</u></p> <p><u>Religious Body</u></p> <ul style="list-style-type: none"> ● The Hong Kong Buddhist Association (HKBA) 	<p>The Concern Group and the Task Force welcome our proposal to remove the criminal and civil liability for importation and possession of parallel imported items by educational establishments and libraries for their educational and library uses.</p> <p>CMA, FHKI, HKGCC and LP support further liberalization of parallel importation of copyright works. They demand complete decriminalization or shortening of the 18-month period after public release during which parallel importation attracts criminal liability (“the criminal sanction period”) for the following reasons –</p> <p>(a) liberalization of parallel importation would benefit consumers and SMEs;</p> <p>(b) the 18-month criminal sanction period only serves to protect the interests of exclusive licensees which is beyond the scope of copyright protection;</p> <p>(c) publishers should resort to agreements with importers and dealers to address the problem of parallel importation, instead of relying on legislation to</p>	<p>We note the strong demands from user groups to further liberalize parallel importation of copyright works. Having considered the views received in these few months and having balanced the interests of users and owners of copyright works, we propose to further liberalize parallel importation by (a) removing the civil and criminal liability pertaining to the importation and possession for use of parallel imports of copyright works by all business end-users except those for commercial dealing purposes; and (b) reducing the criminal sanction period to nine months. On (a), the relaxation for business end-use will not apply to parallel imported musical sound recordings, musical visual recordings, movies and TV dramas used for public performance purposes.</p>

<p>10. Parallel Importation of Copyright Works (Paras. 37-38 of LC Paper No. CB(1)1792/04-05(05))</p> <ul style="list-style-type: none"> - to maintain the existing restrictions on parallel importation of copyright works, but remove the criminal and civil liability for importation and possession of such items by educational establishments and libraries for their educational and library uses 			
	Organizations / Individuals	Views/ Concerns	Administration's Response
		<p>protect their commercial interests;</p> <p>(d) the existing restriction on parallel importation of copyright works is inconsistent with the Administration's policy on parallel importation of other commodities which has been fully liberalized; and</p> <p>(e) parallel imported items of copyright works are genuine goods and royalties have already been paid for these items.</p> <p>Specifically, HKGCC suggests shortening the criminal sanction period to 12 months. It does not support our proposal to remove the criminal liability for importation and possession of parallel imported items of copyright works by educational institutions as it will create a double-standard in applying the criminal law. LP suggests shortening the criminal sanction period to six months and reviewing whether the criminal sanction period should be removed one year afterwards. HKBA suggests that importation and possession of parallel imported items of copyright works by NGOs should be allowed.</p>	

10. Parallel Importation of Copyright Works (Paras. 37-38 of LC Paper No. CB(1)1792/04-05(05)) - to maintain the existing restrictions on parallel importation of copyright works, but remove the criminal and civil liability for importation and possession of such items by educational establishments and libraries for their educational and library uses			
	Organizations / Individuals	Views/ Concerns	Administration's Response
10.2	<u>Publication Industry</u> <ul style="list-style-type: none"> ● The Anglo-Chinese Textbook Publishers Organisation ● Aristo Educational Press Ltd. ● Canotta Publishing Co., Ltd. ● Chung Tai Educational Press ● The Commercial Press (HK) Ltd. ● Greenwood Press ● Hon Wing Book Co., Ltd. ● Hong Kong Comics Federation ● Hong Kong Educational Publishers Association ● Hong Kong Educational Publishing Co. ● Hong Kong Reprographic Rights Licensing Society ● Hong Kong Publishing Federation Limited ● Jing Kung Educational Press ● Modern Educational Network Limited ● Modern Educational Research Society, Ltd. ● Pilot Publishing Company Ltd. ● Pilot Publishers Services Ltd. ● Precise Publications Ltd. ● T. H. Lee Book Co., Ltd. ● Witman Publishing Co (HK) Ltd. ● Ying Lee Music Company 	Book publishers strongly object to any shortening of the 18-month criminal sanction period because such measure would – (a) stifle the development of Hong Kong's creative industry and create unemployment; (b) flood the local market with cheaper parallel imports from the Mainland and discourage foreign investment; (c) encourage piracy activities as pirated copies often disguise themselves as parallel imports; (d) place consumers in a disadvantaged position as they may attract legal liability inadvertently by possessing pirated copyright works for use in business since they may not be able to differentiate whether the works are pirated or parallel imported; and (e) the existing 18-month criminal sanction period is already not adequate as publishers of books targeting at long-term sale normally require several	We wish to point out that treatment of parallel imports of copyright works varies in different economies. The issue of parallel importation has always been controversial. We believe our refined proposal has struck a fine balance between the interests of copyright owners and those of users of copyright work. We disagree to the suggestion that relaxation of parallel importation for educational establishments and libraries should be subject to the local availability of the copyright work because such a condition will not facilitate acquisition of parallel imported items of copyright works by educational establishments and libraries for their education and library uses. We will take into account MPIA's concerns over how to define business end-uses other than commercial dealing activities when we draft the detailed provisions.

<p>10. Parallel Importation of Copyright Works (Paras. 37-38 of LC Paper No. CB(1)1792/04-05(05))</p> <ul style="list-style-type: none"> - to maintain the existing restrictions on parallel importation of copyright works, but remove the criminal and civil liability for importation and possession of such items by educational establishments and libraries for their educational and library uses 			
	<p>Organizations / Individuals</p>	<p>Views/ Concerns</p>	<p>Administration's Response</p>
	<p><u>Film Industry</u></p> <ul style="list-style-type: none"> ● Federation of Hong Kong Filmmakers ● Film Industry Response Group ● Hong Kong Video Development Foundation ● Motion Pictures Association ● Hong Kong Kln and New Territories Motion Picture Industry Association Ltd (MPIA) ● Movie Producers and Distributors Association of Hong Kong Ltd <p><u>Music Industry</u></p> <ul style="list-style-type: none"> ● International Federation of the Phonographic Industry (HK Group) Ltd (IFPI) 	<p>years before they can achieve break even or some reasonable return.</p> <p>The Hong Kong Comics Federation also objects to liberalization of parallel imports of their works because the industry's income would be seriously affected due to the competition from parallel imports of comic books from Taiwan and the Mainland. The reduction in business would in turn affect the development of the local comic industry. The exclusive licensees in HK should be protected as parallel importers should not be allowed to free ride on their investment in promoting the works. They point out that Japanese publishers typically grant overseas publication licences only some months after the serial has been published in Japan. Having regard to the time lag between the first publication of the comic books in Japan and local publication of the translated version in Hong Kong, and the time required for collecting evidence for bringing a criminal case, the 18-month period cannot be shortened. It also maintains that the industry has difficulty in taking civil actions against a great number of small retailers because the high legal fees cannot be offset by the limited compensation.</p>	

	Organizations / Individuals	Views/ Concerns	Administration's Response
		<p>On the proposed liberalization of importation and possession of parallel imports of copyright works by educational and library users, HKVDF and IFPI suggest that the exceptions should only be allowed when the copyright works are not available in the Hong Kong market.</p> <p>The film and music industries are strongly against any shortening of the 18-month criminal sanction period for the following reasons –</p> <p>(a) forcing investors/producers to compete with cheaper imported parallel imports of their works will destroy any incentive for further investment and creation of films in Hong Kong;</p> <p>(b) any shortening of the 18-month criminal sanction period will discourage distributors from acquiring licensing rights to distribute local and overseas movies as parallel importers may free-ride on the exclusive licensees' marketing efforts, which in turn will affect the financing of further production of the local film industry;</p>	

10. Parallel Importation of Copyright Works (Paras. 37-38 of LC Paper No. CB(1)1792/04-05(05))

- to maintain the existing restrictions on parallel importation of copyright works, but remove the criminal and civil liability for importation and possession of such items by educational establishments and libraries for their educational and library uses

<p>10. Parallel Importation of Copyright Works (Paras. 37-38 of LC Paper No. CB(1)1792/04-05(05))</p> <ul style="list-style-type: none"> - to maintain the existing restrictions on parallel importation of copyright works, but remove the criminal and civil liability for importation and possession of such items by educational establishments and libraries for their educational and library uses 			
	Organizations / Individuals	Views/ Concerns	Administration's Response
		<p>(c) copyright owners have production and distribution rights and that they are entitled to segment different geographical markets for commercial exploitation of their works; and</p> <p>(d) any shortening of the 18-month criminal sanction period will discourage investors of the creative/content industries, resulting in gradual disappearance of the Cantonese pop music culture.</p> <p>The film and music industries further request an extension in the criminal sanction period from 18 months to 24 months and claim that this would encourage users to acquire copies of their works through the digital channel instead of a cheaper parallel imported version. This would in turn facilitate the establishment of a digital publication centre in Hong Kong.</p> <p>MPIA also objects to removing business end-user's liability pertaining to importation and possession of parallel imported copyright works by business end-users for fear of the legal uncertainty that may arise due to the</p>	

10. Parallel Importation of Copyright Works (Paras. 37-38 of LC Paper No. CB(1)1792/04-05(05))			
- to maintain the existing restrictions on parallel importation of copyright works, but remove the criminal and civil liability for importation and possession of such items by educational establishments and libraries for their educational and library uses			
	Organizations / Individuals	Views/ Concerns	Administration's Response
		difficulty in defining what constitutes business end-use.	

11. Rental Rights for Films and Comic Books (Paras. 39 to 41 of LC Paper No. CB(1)1792/04-05(05))			
- to introduce “rental rights” for films and comic books			
	Organizations / Individuals	Views/ Concerns	Administration’s Response
11.1	<p><u>Trade Organisation</u></p> <ul style="list-style-type: none"> ● Hong Kong General Chamber of Commerce (HKGCC) <p><u>Educational Bodies</u></p> <ul style="list-style-type: none"> ● Concern Group of the Education Sector (the Concern Group) ● The Task Force on Copyright in Education (Heads of Universities Committee) (the Task Force) 	<p>HKGCC agrees with the proposal and calls for regulation of the copyright licensing bodies. The Concern Group and the Task Force hold the view that schools, universities and public libraries should be exempted from the civil liability pertaining to rental rights if no rental charge is levied on the loan of film and sound recording items and no commercial advantage is gained.</p>	<p>Rental rights restrict commercial rental activities (i.e., for direct or indirect economic or commercial advantage) only and hence non-commercial lending activities in schools, universities and public libraries will not be affected.</p> <p>The Copyright Tribunal is a quasi-judicial body established under the Copyright Ordinance. We consider the existing mechanism whereby users may refer to the Copyright Tribunal any disputes over licensing schemes provided by copyright licensing bodies will provide a reasonable safeguard for the fair operation of a licensing scheme.</p>
11.2	<p><u>Film Industry</u></p> <ul style="list-style-type: none"> ● Federation of Hong Kong Filmmakers ● Film Industry Response Group ● Hong Kong Video Development Foundation (HKVDF) ● Hong Kong Kln and New Territories Motion Picture Industry Association Ltd ● Movie Producers and Distributors Association of Hong Kong Ltd 	<p>The film, music and comic industries welcome the proposed rental rights for films and comic books.</p> <p>Some submissions from the film industry object to the pre-condition for commencing the provision, i.e. a reasonable amount of copyright items available in the existing rental market have been covered by rental licensing schemes. HKVDF submits that the proposed provision on rental rights should enable right owners to restrict acts or practice in the nature of rental, lease or lending in such a way that rental activities under the name of “second-hand shops” are restricted.</p>	<p>According to the existing provisions on rental rights for sound recordings and computer programs under the Copyright Ordinance, rental activities refer to the making of a copy of a work available for use, <u>on terms that it will or may be returned</u>, for direct or indirect economic or commercial advantage. We will develop the provisions on rental rights for films and comic books along the same formulation. Hence, rental activities disguised under the name of “second-hand trading” (i.e., a shop selling works to customers on the understanding that they may be sold back to the shop at a lower price) as mentioned by the film and comics industries will be covered under the new provision. However, the rental rights provisions will not apply to genuine second-hand shops.</p>

11. Rental Rights for Films and Comic Books (Paras. 39 to 41 of LC Paper No. CB(1)1792/04-05(05)) - to introduce “rental rights” for films and comic books			
	Organizations / Individuals	Views/ Concerns	Administration’s Response
	<p><u>Music Industry</u></p> <ul style="list-style-type: none"> • International Federation of the Phonographic Industry (HK Group) Ltd (IFPI) <p><u>Comics Industry</u></p> <ul style="list-style-type: none"> • Hong Kong Comics Federation <p><u>Liberal Party (LP)</u></p>	<p>IFPI points out that when compared with motion pictures, musical visual recordings are more prone to being copied for repeated listening. Any compulsory licensing scheme for the rental rights for musical visual recording will render the rental rights granted to musical sound recordings nullified and useless as customers will be able to make copies of both audio and /or audio-visual recordings from a rented copy of a musical visual recording. It requests that musical visual recording be treated as a special category of work that an unrestricted rental right be granted to the producer of the musical visual recordings.</p> <p>HK Comics Federation considers that tea houses providing comic books for leisure reading should also be treated as renting out comic books and urges the Administration to address rental activities covered up under the name of “second-hand trading”.</p> <p>LP has no objection to the introduction of rental rights but remarks that copyright owners should develop reasonable and user-friendly rental licensing schemes. It urges the Administration to provide a facilitating business environment for rental shop operators and to enhance the role of the Copyright Tribunal for speedy and effective</p>	<p>We maintain that it is necessary not to commence the provisions on rental rights for films and comic books until a reasonable amount of copyright items available in the existing rental market have been covered by rental licensing schemes, in order to ensure that existing film and comic book rental shops have a legal means of carrying on their current business after the introduction of the new rights. We will also encourage the concerned copyright owners to develop reasonable and user-friendly licensing schemes for the rental business and adopt a one-stop shop approach as far as possible to handle licensing requests. That said, we note that the nature of musical visual recordings may be different from movies as suggested by IFPI and will further discuss with the sound recording industry as to whether the pre-condition of having a reasonable licensing scheme in place should also apply to musical visual recordings.</p> <p>Under the existing provisions on rental rights for sound recordings and computer programs, rental activities do not cover making available the works for on-the-spot reference use. We will develop the provisions on rental rights for films and comic books along the same formulation. Hence, the rental rights for comic books will not apply to the provision of comic books for on the spot reading or reference (e.g. comic book café).</p>

11. Rental Rights for Films and Comic Books (Paras. 39 to 41 of LC Paper No. CB(1)1792/04-05(05))

- to introduce “rental rights” for films and comic books

	Organizations / Individuals	Views/ Concerns	Administration’s Response
		<p>handling of disputes between copyright owners and rental shops. It also questions whether the proposed rental right can cover the provision of comic books for on the spot reading.</p>	<p>We note the concern that the introduction of rental rights may give rise to disputes about the rental licensing terms and fees. We believe that the existing mechanism, with necessary extension to cover the new rental rights, for adjudicating disputes over licensing schemes by the Copyright Tribunal will address the concern.</p>

<p>12. Issues relating to the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty (Paras. 42 and 43 of LC Paper No. CB(1)1792/04-05(05))</p> <p>- to effect those requirements in the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty which are not yet incorporated in the Copyright Ordinance</p>			
	<p>Organizations / Individuals</p>	<p>Views/ Concerns</p>	<p>Administration's Response</p>
<p>12.1</p>	<p><u>Trade Organisation</u></p> <ul style="list-style-type: none"> ● Hong Kong General Chamber of Commerce (HKGCC) <p><u>Liberal Party (LP)</u></p>	<p>HKGCC agrees with the proposals. LP points out that Hong Kong do not have international obligation to implement the requirements and suggests that the Administration should avoid over-regulation. It also suggests that the definition of “performer” and “performance” should be dealt with separately from the question of copyright in the internet environment.</p>	<p>Although Hong Kong does not have any international legal obligation to implement the requirements of the treaties, we consider it desirable to incorporate the requirements into our Copyright Ordinance so that our intellectual property protection regime will be in line with the latest international standards.</p> <p>Article 2(a) of the WIPO Performances and Phonograms Treaty (WPPT) provides that “performers” refer to actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore. The definition of “performer” and “performance” under our Copyright Ordinance already largely correspond with the definition under the WPPT. Our proposed amendments only seek to make certain that any persons who perform artistic works or expressions of folklore would also be protected under the Ordinance.</p>

13. Other views			
	Organizations / Individuals	Views/ Concerns	Administration's Response
13.1	<p><u>Educational Body</u></p> <ul style="list-style-type: none"> ● The Task Force on Copyright in Education (Heads of Universities Committee) (the Task Force) <p><u>Music Industry</u></p> <ul style="list-style-type: none"> ● International Federation of the Phonographic Industry (HK Group) Ltd (IFPI) <p><u>Film Industry</u></p> <ul style="list-style-type: none"> ● Hong Kong Video Development Foundation (HKVDF) ● Motion Picture Association (MPA) ● Movie Producers and Distributors Association of Hong Kong Ltd (MPDA) <p><u>Comics Industry</u></p> <ul style="list-style-type: none"> ● Hong Kong Comics Federation 	<p>The Task Force recommends the Administration to address in the next round of consultation the need for the provision of guidelines on the use of digital materials and the internet by the education sector.</p> <p>IFPI comments that Hong Kong needs to update its legislation to deal with the problem of internet piracy, especially in the form of unauthorized peer to peer (P2P) file sharing. It urges the Administration to legislate digital copyright law which it considers as essential before the e-commerce of copyright materials can take off. HKVDF shares similar view.</p> <p>MPA suggests combining the current legislative amendment exercise with the review of issues like rights and obligations of Internet Service Providers and statutory damages. It also suggests extending the term of copyright protection beyond what is currently provided under the Copyright Ordinance.</p> <p>MPDA suggests the Administration to step up efforts on publicity and public education to promote the community's awareness of and respect for intellectual property rights. It also urges the Administration to combat illegal downloading and uploading of video production from/to the Internet and to speed up the review on copyright protection in the digital environment. It further suggests amending the definition of author in the case of a film from "producer and the principal director" to</p>	<p>The Copyright Ordinance is technology-neutral in that the protection conferred on copyright works applies to works stored in both physical and electronic media. Under the Ordinance, any person who distributes an infringing copy of a computer program, a movie, a musical recording or a television drama otherwise than for the purpose of, or in the course of any trade or business, to such an extent as to affect prejudicially the owner of the copyright commits an offence. In this connection, we believe that the recent conviction concerning a case of copyright infringement on P2P networks sends a strong message that copyright infringement on P2P network may attract criminal sanction.</p> <p>The Copyright Ordinance also confers civil rights on copyright owners to seek remedies from persons who have infringed their copyright. Copyright owners can make use of these rights to take actions against those persons who engage in copyright infringing activities on P2P networks.</p> <p>To combat the Internet piracy problem, we have adopted a multi-pronged approach encompassing law enforcement, industry cooperation and public education. We are also examining whether any legislative amendments are needed for more effective protection of copyright works in the digital environment. Issues being reviewed include whether a technologically neutral right of communication should be introduced for copyright</p>

13. Other views			
	Organizations / Individuals	Views/ Concerns	Administration's Response
		<p>“investor and producer”.</p> <p>The Hong Kong Comics Federation is concerned about the potential growth in copyright infringement on the Internet and suggests the Administration to consider another set of law to deal with Internet-related issues including the responsibilities and liabilities of Internet services operators.</p>	<p>owners, how to facilitate copyright owners to take civil actions against infringing activities on the Internet, whether statutory damages for civil infringements should be introduced, and the role of Internet Service Providers in the fight against Internet piracy. These issues carry wide social implications and require thorough consultation with the public. We intend to conduct a public consultation exercise after we have examined the various issues. The main aim of the current amendment exercise is to deal with the outstanding issues from the Copyright (Suspension of Amendments) Ordinance 2001 (Cap.568), the validity of which will expire in July 2006. Hence, it is not appropriate to combine the two exercises.</p> <p>On MPA's suggestion of extending the terms of copyright protection, it is a subject that would affect various sectors of the community and has wide implications. In assessing the implications of this suggestion, we need to have regard to the interests of both owners and users of copyright works and overseas practices and developments in this respect, bearing in mind any international legal obligations we have to observe.</p> <p>We disagree to MPDA's suggestion to amend the definition of “author” in the case of film. The author of a film is taken to be the producer and the principal director under the Copyright Ordinance (section 11(2)(c)). The principal director must be an</p>

13. Other views			
	Organizations / Individuals	Views/ Concerns	Administration's Response
			individual. The duration of copyright is 50 years from the death of the principal director, the author of the screenplay or the dialogue, or the composer of the music (section 19(2)). Changing this to an investor, which might be a body corporate, will change the basic structure of the duration of copyright in a film. We do not see there is any room for such a change.

A Summary of the Preliminary and Refined Proposals on Various Copyright-Related Issues

The following preliminary and refined proposals on various copyright-related issues are set out in LC Paper No. CB(1)1792/04-05(05) and in this paper respectively–

- (a) Preliminary proposal: to maintain the existing scope of end-user criminal liability relating to the possession of an infringing copy of a copyright work for use in business to the four categories of copyright works, namely, computer programs, movies, television dramas and musical recordings.
Refined proposal: No change.
- (b) Preliminary proposal: to introduce a new business end-user criminal offence against significant infringement activities involving the act of copying with a view to distributing or the act of distributing infringing copies of copyright works published in books, newspapers, magazines or periodicals for the purpose of and in the course of business, other than by educational institutions which are non-profit making or subvented by the Government.
Refined proposal: to limit the proposed business end-user copying/distribution criminal offence for copyright works published in books, newspapers, magazines and periodicals to regular or frequent infringements only, and to lay down numerical perimeters within which the concerned infringing acts will not attract criminal liability (“safe harbour”) (paragraphs 3 to 9 of this paper).
- (c) Preliminary proposal: to provide statutory defence against the business end-user criminal liability in (a) and (b) above for employees and certain professionals and persons under specific circumstances.
Refined proposal: No change.
- (d) Preliminary proposal: to introduce a new criminal offence against the director(s) or partner(s) if a body corporate or partnership has done an act attracting the business end-user criminal liability in (a) or (b) above unless there is evidence

proving that the director(s) or partner(s) has not authorized the concerned infringing act to be done.

Refined proposal: to limit the proposed directors/partners criminal liability associated with a body corporate or partnership having committed a business end-user criminal offence to only those directors, partners or persons carrying out chief executive functions; (paragraphs 10 and 11 of this paper.)

- (e) Preliminary proposal: to accumulate more enforcement experience before concluding whether and what legislative means should be introduced to facilitate proof of infringing nature of computer programs in business end-user possession criminal offence.

Refined proposal: No change.

- (f) Preliminary proposal: to exempt from copyright restriction 'fair dealing' with a copyright work for the purposes of education and public administration.

Refined proposal: No change.

- (g) Preliminary proposal: to extend the scope of some existing 'permitted acts' for education.

Refined proposal: No change.

- (h) Preliminary proposal: to modify the existing 'permitted acts' for research or private study.

Refined proposal: No change.

- (i) Preliminary proposal: to prescribe conditions under which libraries may make replacement copies of a copyright work for archiving purposes and involving storing the work in a different medium (medium shifting)

Refined proposal: No change.

- (j) Preliminary proposal: to set aside certain proposals relating to 'permitted acts' put forward to the Panel in 2002 and to take forward other proposals.

Refined proposal: No change.

- (k) Preliminary proposal: to extend existing civil rights of copyright owners against circumvention of technological

measures used to protect copyright works from copyright infringement to cover access control measures and the act of circumvention.

Refined proposal: to narrow the scope of the proposed civil liability on the act of circumvention of technological measures used to prevent copyright infringements so that it will only apply if the person who undertakes the act knows or has reasonable grounds to know that he is pursuing a circumvention objective, and with a view to inducing, enabling, facilitating or concealing an infringement of copyright (paragraphs 16 and 17 of this paper).

Refined proposal: to introduce more exemptions from civil liability arising from circumvention activities and where appropriate to extend these exemptions to the proposed criminal offence in (m) below (paragraphs 18 and 19 of this paper).

- (l) Preliminary proposal: to provide that the copyright owner or his exclusive licensee has the same civil right against interference with 'rights management information' as he has in respect of an infringement of copyright.

Refined proposal: No change.

- (m) Preliminary proposal: to introduce a new criminal offence against commercial dealing of devices, products or components and the provision of services on a commercial scale which circumvent technological measures applied to a copy of a copyright work.

Refined proposal: to exclude those technological measures which are applied to a copy of a copyright work embodied in a physical article and have the effect of, inter alia, controlling market segmentation from the proposed criminal offence on the commercial dealing of devices, products or components to circumvent technological measures for copyright protection and on the provision of services on a commercial scale to facilitate circumvention (paragraphs 12 to 15 of this paper).

- (n) Preliminary proposal: to maintain the existing restrictions on parallel importation of copyright works, but remove the criminal and civil liability for importation and possession of such items by educational establishments and libraries for their educational and library uses.

Refined proposal: to de-criminalize parallel importation after nine months of public release, and to further liberalize the existing restrictions on the importation and possession of parallel imported items of copyright works by business end-users (paragraphs 20 to 25 of this paper).

- (o) Preliminary proposal: to introduce ‘rental rights’ for films and comic books.

Refined proposal: No change.

- (p) Preliminary proposal: to effect those requirements in the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty (“the Internet Treaties”) which are not yet incorporated in the Copyright Ordinance.

Refined proposal: No change.