

**Submissions to the Bills Committee on the
Copyright (Amendment) Bill 2009
(as of 9 June 2009)**

Numeric Limits in relation to the copying and distribution offence			
	Organisations / Individuals	Views / Concerns	Administration's Response
1	<p><u>I. Written submissions by the following parties –</u></p> <p>(a) Hong Kong and International Publishers' Alliance (5 June)</p> <p>(b) Hong Kong Reprographic Rights Licensing Society (5 June)</p> <p><u>II. Oral Submissions on 9 June by the following parties –</u></p> <p>(a) Hong Kong Publishing Federation</p> <p>(b) Anglo-Chinese Textbook Publishers Organisation</p>	<p>(i) Supported the introduction of the offence, which would bring the level of protection afforded to printed works on a par with that for other types of works.</p> <p>(ii) Noted that the Bill was the product of extensive debate and significant compromise. Opposed to any further relaxation of the numeric limits.</p> <p>(iii) Raised concern regarding the proposed exclusion of Intranet distribution. Suggested that if the exclusion was considered necessary, the draft provision should state expressly that access to such "Intranet" network is restricted to "persons affiliated with the operator of the network in the capacity of employees, students or a similar status".</p>	<p>(i) Noted.</p> <p>(ii) Noted.</p> <p>(iii) The proposal to exclude Intranet distribution is an interim measure to allow more time for the relevant copyright owners to roll out, publicise and promote suitable licensing arrangements, and for the Administration and the copyright owners to formulate the numeric limit(s) relevant to Intranet distribution. We note the wordings suggested by some stakeholders for Intranet exclusion. We consider the current draft provision, which mirrors section 119B(5) of the Copyright Ordinance, appropriate and in line with our policy intent.</p>

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	<p>(c) Hong Kong Educational Publishers Association</p> <p>(d) Hong Kong and International Publishers' Alliance</p> <p>(e) Hong Kong Reprographic Rights Licensing Society</p>	<p>(iv) Suggested adding new provisions containing rebuttable presumptions to govern how distribution of infringing copies via e-mail should be treated for the purpose of applying the numeric limits.</p>	<p>(iv) Whether an infringing copy has been distributed via email is a question of fact to be determined having regard to the evidence available in a particular case. For instance, where there is sufficient proof that the e-mail operating system is functioning properly at the material time, and that the e-mail containing infringing copies has been sent out, such would constitute admissible evidence that the infringing copies have been distributed to the relevant addressee(s). Having consulted the Department of Justice, we consider it not necessary to introduce the proposed presumption for the copying and distribution offence.</p>

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2	<p>I. <u>Written submissions of 3 June by Hong Kong Copyright Licensing Association Limited</u></p> <p>II. <u>Oral Submissions on 9 June by the following parties –</u></p> <p>(a) Hong Kong Copyright Licensing Service Limited</p> <p>(b) Hong Kong Economic Times</p> <p>(c) Sing Tao News Corporation Limited</p> <p>(d) Hong Kong Copyright Licensing Association</p> <p>(e) New Media Group Holdings Limited</p>	<p>(i) Supported the introduction of the offence, which would bring the level of protection afforded to printed works on a par with that for other types of works.</p> <p>(ii) Supported the use of A4 size pages as the basis of the numeric limit. Stressed that the numeric limit of 500 infringing pages within any 14-day period was reasonable and there being no further room for relaxation.</p> <p>(iii) Suggested that the offence should apply to Intranet distribution as early as possible.</p>	<p>(i) Noted</p> <p>(ii) Noted.</p> <p>(iii) Noted. We will continue to work with the stakeholders to formulate the appropriate numeric limit(s) for Intranet distribution.</p>

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3	<p>I. <u>Written submissions by the following parties –</u></p> <p>(a) Federation of Hong Kong Industries (4 June)</p> <p>(b) The Chinese Manufacturers' Association of Hong Kong (5 June)</p>	<p>(i) Opined that the act of copying and distributing copies of printed works for internal reference was minor infringement and should not be subject to criminal sanctions.</p> <p>(ii) Considered that (a) the numeric limits were complicated and might be difficult to enforce, and (b) a prescribed set of numeric limits might not be able to cater for the different needs of businesses.</p>	<p>(i) The offence, as contained in the Copyright (Amendment) Ordinance 2007, had already been passed by the Legislative Council in June 2007. It reflects the consensus that large-scale and frequent/regular copyright infringement involving printed works should be criminalised.</p> <p>(ii) In drawing up the numeric limits, we have endeavoured to make them easy to understand, and reasonably clear and certain for enforcement purposes. To avoid inadvertent breaches, the Administration will roll out suitable publicity and public education programmes before bringing the provision into operation.</p>