

**Extract from the report on personal computers  
of Housing Department's Internal Audit Section**

## 1 INTRODUCTION

1.1 This is a report of an audit on personal computers (PCs) carried out by the Internal Audit Section (IAS) from late September 1998 to early March 1999. The audit assignment is a computer audit scheduled to be commenced and completed in the 1998/99 according to the Internal Audit Plan for 1998/99.

1.2 The main objectives of the audit are:

- to ensure appropriate policies have been established to adequately regulate the functions of acquisition, usage, maintenance, custody, and disposal of PCs and peripheral devices;
- to ensure all relevant policies concerning management of PCs and peripherals are complied with by the management and operational staff;
- to ensure all PCs, peripheral devices and data are adequately safeguarded;
- to ensure that only licensed software are used on the Housing Authority (HA)'s PCs; and
- to identify areas for improvements in terms of internal controls, security, operational efficiency, economy and effectiveness of the management of PCs and peripherals.

## 2 BACKGROUND

2.1 HA has invested a large sum in PCs and peripherals in recent years to improve working efficiency of its staff. Computer Division (CD) of the Housing Department (HD) is responsible for overseeing the acquisition, relocation, maintenance, and inventory record keeping of all HA's PCs (including software) and peripherals. The disposal of PCs and peripherals is the responsibility of the Supplies Section.

2.2 According to the inventory record provided by CD on 26 October 1998, there were around 7,800 sets of stand alone or networked PCs installed in HA.

2.3 In 1997/98, HA spent HK\$41,623,967 on PCs and peripherals. A breakdown of the expenditure is shown as follows -

<b>Expenditure incurred on</b>	<b>HK\$</b>
Acquisition of PC hardware	23,041,676
Acquisition of PC software	11,111,040
Maintenance of PCs and peripherals	7,471,251
<b>Total</b>	<b>41,623,967</b>

2.4 In June 1996, CD issued a "Microcomputer User Guide for users of standard Microcomputer System" (User Guide) for reference by users in each location. The User Guide provides comprehensive guidelines on the use of PCs including installation, maintenance, security, operation, etc.

### **3 SCOPE OF WORK**

3.1 The scope of the audit covers policies, procedures and internal controls in the management of PCs and peripherals of the HA in term of -

- acquisition and installation;
- use of licensed software;
- data security;
- maintenance;
- inventory record keeping;
- write off/disposal; and
- custody and insurance.

3.2 The Year 2000 compliance issue is excluded from the audit because this is covered by a separate audit assignment.

### **4 APPROACH AND METHODOLOGY**

4.1 The audit was conducted by identifying controls in the management of PCs and peripherals. We obtained and examined all relevant policies, instructions, manuals and procedures for the management of PCs and peripherals. In addition, interview meetings were held with relevant staff of CD and users of PCs in selected Sections. The adequacy and effectiveness of the control procedures were evaluated against possible risks surrounding the management of PCs. Physical inspections of PCs and peripherals in selected Sections were performed on a sample basis. The inspections included searches for illegal software and performance of tailor-made compliance and substantive audit tests to confirm our understanding, the compliance and reliability of the control procedures identified.

### **5 AREAS FOR IMPROVEMENT**

#### **5.1.1 Illegal software <sup>1</sup>**

The possession/use of illegal software are strictly forbidden (para. 10.2.4 of the User Guide). A memorandum on "unauthorised use of computer software" was issued on 15 March 1996 and the memorandum is re-circulated on a quarterly basis to remind users not to use any illegal software. However, when we performed physical inspections on PCs in the selected 13 Sections/Estate Offices, illegal software (including shareware <sup>2</sup> downloaded from internet beyond the free trial period) were still found in 15 out of 112 sets of PCs inspected, i.e. 13% of the PCs inspected had illegal software. The total number of illegal software installed in the PCs were 51 representing an average of 0.46

illegal software per PC inspected. Details of the illegal software found in our inspections are listed in Appendix 1.

The possession of illegal software for any purposes has already infringed the copyright law which is liable to both criminal and civil proceedings. Besides, through the installation of illegal software in the HA's PCs, the risk of virus infection will increase greatly.

According to the PC Operation Guidelines in the User Guide, a PC manager is nominated for each PC. Most of the PC managers responsible for the PCs where illegal software was found claimed that they were not aware of the existence of illegal software in their PCs, except for the user in Tak Tin Estate Office and Finance Unit of Commercial and Business Development Branch (formerly Commercial and Services Branch) who admitted that they had installed the identified illegal software.

Despite that a memo is circulated on a quarterly basis to remind users not to install any illegal software in HA's PCs, we consider that the control is not adequate because the role of PC managers is not clear as to be held accountable for such offence and there is no requirement on periodic checking by PC managers on the existence of illegal software.

## **6 RECOMMENDATIONS**

### **6.1.1 Illegal software**

It is recommended that CD should issue guidelines and instructions to tighten the control on illegal software. The main user of each PC should be the designated user, who is responsible for safeguarding his/her PC from installation of any illegal software.

Furthermore, the PC manager of each Section/Unit should perform quarterly reviews on all the PCs in his/her Section/Unit. The review shall cover detection of illegal software by comparing the software installed in the PCs against software inventory list provided by CD. A review report should be prepared by the PC manager, countersigned by both the designated user and the Section/Unit Head for record purposes. CD should review the checking reports on a sampling basis to ensure that proper checking have been performed by PC managers.

If illegal software is found during the PC manager's review, the findings should be reported to the Head of Branch and CD. Investigation should be carried out to find out the source of the illegal software. Staff should be warned that disciplinary actions will be taken against the officer who is proved to be responsible.

## **7 RESPONSE FROM MANAGEMENT**

CD accepts the recommendations in general and have started/will start to strengthen the guidelines and control of Information Technology (IT) use. CD's detailed comments are listed in the following paragraphs. To strengthen the enforcement of compliance, CD are examining the option of engaging a third party to conduct audit checks on IT on an on-going basis. FAB also agrees to our comments and recommendations.

### **7.1.1 Illegal software**

CD believe that the captioned issues raised by IAS and experienced by individual users despite

repeated circulars and guidelines issued by them from time to time can be minimised through enhanced communication and enforcement.

In order to enhance communication, CD have already been re-packaging a set of "strategic guidelines" by pulling together the relevant circulars/policies previously issued at different occasions and adding in more appropriate ones. This "strategic guidebook", providing easy and quick reference to the proper use of PC, would be kept constantly updated and available both in the form of a handy manual as well as accessible electronically through our intranet service for a wider user coverage.

CD also consider the need to "educate" their users more on the proper use and operation of their PCs. CD propose to include a chapter about the subject as a standard topic in the PC training course that the Training Section has been offering to staff members regularly. CD would provide additional sessions to users whenever necessary.

Setting guidelines and educating staff members alone would not help much without introducing "policing" procedures. CD do agree with IAS's recommendation that Branches should formally appoint and re-establish the duties of their "PC Managers". CD can help clarify their responsibilities. CD further propose individual Branches to keep a registry of their "PC Managers" for subsequent communication and monitoring purposes. A master copy of registries of all Branches can be kept in CD for Housing Department Computer Committee's (HDCC) reference and control. The "PC Managers" should carry out the enforcement functions as part of their responsibilities. Any PC malpractice by staff members should be reported to Branch Heads.

CD will examine and recommend the adoption of appropriate "penalty" rules to tighten up the control.

The recommendation is agreed in principle by FAB. FAB point out that the role of PC manager needs to be more clearly defined and adequate training and tools/software be provided to the nominated PC manager to enable he/she to identify the illegal software in PCs.

**Details of unauthorised software found  
in Internal Audit Section's visits**

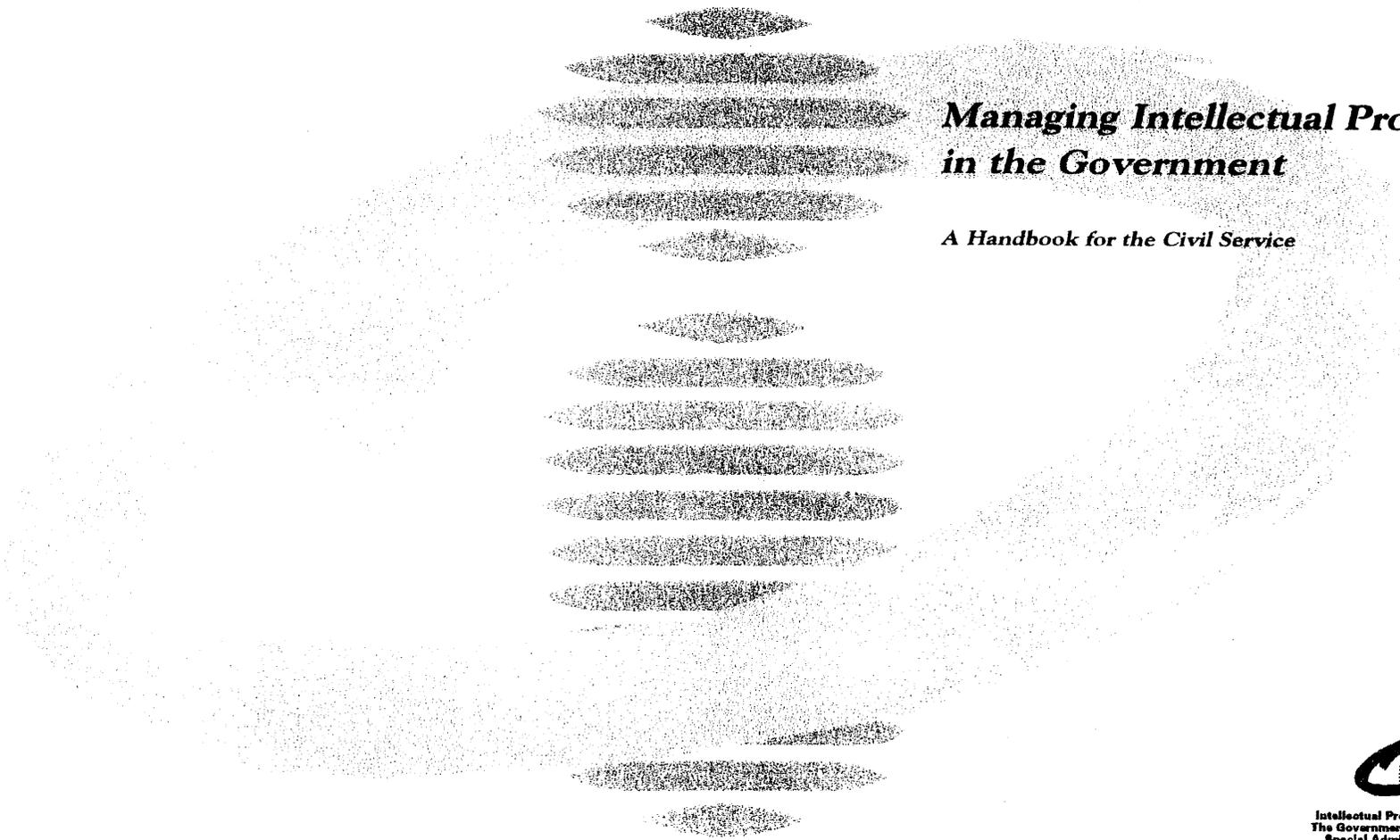
Section/Estate	Machine No.	No. of Copies of Unauthorised Software Found
Yue Wan DMO	56Y0027	1
Tak Tin Estate	Y1025	1
	Y2096	3
Tak Tin DMO	U0066	1
	P0313	1
	Y0002	2
Mei Lam Estate	Y2106	2
Hin King Estate	Y4174	1
	P0380	3
	P0387 P0388	
Yiu Tung Estate	Y1469	1
	Y4038	1
Finance Unit of Commercial & Services Branch	Y1128	34
	Y2315	

1. Illegal software includes - (i) pirated software which has been installed illegally ;

(ii) unauthorised software which was not on the Department's approved list; and

(iii) shareware downloaded from the Internet.

2.A shareware is a software that is downloaded from the Internet for trial usage. Some of these shareware are free of charge while others are required to be paid for after the trial period.



***Managing Intellectual Property  
in the Government***

*A Handbook for the Civil Service*

Annex B



**Intellectual Property Department  
The Government of the Hong Kong  
Special Administrative Region**

# Introduction

The purpose of this Handbook is to give a brief introduction on the intellectual property law in Hong Kong as it affects the day-to-day work of the Civil Service. Through this introduction, we hope to answer a number of common questions, clear up some misunderstandings, and to improve the overall management of Hong Kong's intellectual property resources and our compliance with intellectual property law.

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# Types of Intellectual Property

## Intellectual Property

Intellectual property is the name commonly given to a group of separate intangible property rights. These include trade marks, patents, copyright, designs, plant varieties and the lay-out design of integrated circuits.

The law creates rights in intellectual property by providing for protection of categories of monopolies. Broadly speaking, intellectual property law works like this -

- it defines rights by ring-fencing the monopolies granted;
- it defines permitted acts by creating certain legal exceptions to the monopolies in the public interest;
- it defines remedies which set out the way the right owner or the Government can enforce rights by civil or criminal proceedings; and
- it sets out ways that rights can be acquired, for example through registration, and how rights can be assigned or licensed by one party to another.

## So for example-

- the owner of a registered trade mark can attach his mark to his goods or services and he can stop anyone else from attaching the mark to their goods or services;
- the owner of a patent can manufacture products incorporating his patented invention, and can exclude anyone else from using that invention;
- the owner of a copyright can copy, publish, perform or import his works and can stop anyone else from doing so.

This system allows creators and subsequent owners of rights to gain economic benefit from charging other people royalties or a lump-sum for using the marks, products or works over which they have obtained their legal monopoly.

## Patents

Patents protect inventions or technical innovations in either products or processes. The patent system encourages new technology by granting the inventor a patent which gives him the exclusive right to exploit the invention for a set term. In exchange, the inventor is required to make the invention public. Patent rights can only

be enforced here if a patent for an invention has been granted in Hong Kong.

A patent will only be granted if the invention is new, involves an inventive step and is capable of being industrially applied.

### **Designs**

Design rights protect features of shape, configuration, pattern or ornament applied to an article by any industrial process. An example would be the shape of a telephone set or new furnishing fabric designs. Unlike copyright, design rights are only recognized in relation to the appearance of mass-produced articles. The design must have features which, in the finished article, appeal to and are judged by the eye. In other words, a design which can be registered must have some features which could influence a consumer's decision on whether or not to buy the article. This is not quite the same as 'artistic merit': it need not be a 'work of art', but it must appeal to the eye.

Design rights can only be enforced in Hong Kong if the design has been registered here.

### **Trade Marks**

Trade marks are signs or logos used by businesses to identify the goods in which they trade, or the services they provide in the course of business. Trade marks can be either registered or unregistered. Although unregistered trade marks are protected by the common law, registering a trade mark makes it much easier to take legal action against people who use the mark for trade or business without the registered owner's permission.

### **Copyright**

Copyright law protects the expression of ideas rather than the ideas themselves. What does that mean? Well, your recipe for a Chinese dish is an 'idea'. You can write it down, or record a sound or video tape explaining the recipe, or draw a set of diagrams or take some photographs explaining how to prepare the dish. When you have done that, copyright law protects your written explanation, or sound or video recording, or your drawings or photographs: no-one is allowed to copy them or publish or broadcast them unless you give permission. But people who follow your instructions, learn the ideas behind them, teach them to other people or even open a restaurant specializing in serving your special dish, all have a legal right to do so.

Copyright can subsist in literary works such as books and computer software, musical works such as musical compositions, dramatic works such as plays, artistic works such as drawings, paintings and sculpture, sound recordings, films, broadcasts, cable programmes and typographical lay-out of published editions of literary, dramatic or musical works.

The owner of a copyright can take legal action against any person who infringes the copyright in the work. The activities which the owner can prevent will differ depending on the type of work which is being infringed. Essentially the owner has the exclusive right to copy the work and to distribute it to the public.

For a work to be protected, the law requires that it should be original; but it is not necessary for the work to have any artistic merit. So for example, if three people take a photograph of the Eiffel Tower -one perfect photograph, one out-of-focus photograph and one over-exposed one-all three of them are still original copyright works which qualify for protection.

Although taking photographs is regarded as requiring sufficient skill to qualify for copyright protection (even with the most modern, 'idiot-proof' cameras, there is some skill in composition of the scene), taking a photocopy does not qualify. Mechanical photocopies are not copyright 'works'. Works can be protected as soon as they are reduced to a permanent form. There is no need to register a copyright work before it can be protected.

### **Confidential Information**

Apart from the protection of official secrets and confidential information under the Government security arrangements, there is an area of law which provides for confidential information to be protected in certain circumstances.

The owner of information can protect information in the following circumstances

-

- the information is inherently confidential (i.e. not information that is generally known;)
- the information is divulged to someone else in circumstances which would imply an obligation to keep the information confidential;

## **Ownership of Intellectual Property**

- the person to whom the information was imparted uses it without authorization; and
- the original owner suffers damage.

Where the confidential information also constitutes personal data, such information will also be protected under the law relating to personal data.

### **Other Rights**

In addition to the types of intellectual property just mentioned, Hong Kong provides special protection for the lay-out designs of integrated circuits and protection of rights in new plant varieties.

The rights of the individual civil servant as against those of the Government are quite complicated. In some cases (e.g. patented inventions) a civil servant inventor has certain rights similar to those of inventors in the private sector. But when it comes to copyright works, the civil servant has less rights than the private sector creator.

### **Public Ownership**

The Hong Kong SAR Government has the right to claim copyright protection for all the copyright works it produces through the efforts of public officers in the course of their duties. Where Government activities have the characteristics of trade or business (albeit non profit-making), the Government has the right to seek trademark protection of its names and logos in respect of its goods and services. The Government can protect patents and designs through registration.

Such rights are not always claimed by all governments in the World. For example constitutional reasons, the US Government does not claim copyright in any government publications or documents.

### **Private Ownership**

Intellectual property works created by someone in his own time and with his own effort belong to the creator alone, subject to certain exceptions relating to employee's works and commissioned works which we will discuss in the paragraphs to follow.

The Government cannot take over such intellectual property works unless empowered to do so by statute or by agreement. If such creations or inventions are taken over by the Government, proper compensation must be paid to the original creator.

### **Employee's Works**

Generally speaking, where a copyright work, design or invention is made by an employee in the normal course of his employment, there is a legal presumption that the rights in the intellectual property belong to the employer. But despite the fact that the employer may be the owner of intellectual property rights in such works, the law provides that compensation should be paid by an employer to an employee in special cases.

In the case of copyright work, where such work is exploited by an employer in a way that could not reasonably have been foreseen by the parties when

the work was made, the employer is required to pay the employee an award. For example, if a teacher in a private school composed a school song, but the song unexpectedly becomes a worldwide hit and is exploited commercially by the school, the law recognizes that the teacher should be entitled to some reward.

The position in the case of civil servants is different because the employee's rights described in the previous paragraph do not apply to Government copyright works. In other words, civil servants are not entitled to any compensation if copyright work produced by them in the course of their employment is exploited by the Government, even in a manner that the Government and the civil servant could not have foreseen.

### **Contract for Services**

The position may be different, however, where a person is employed by the Government under a contract for specific services (e.g. as a 'consultant'). The ownership of the copyright in such works will be covered below under the sub-heading "Commissioned Work". It is advisable that in such cases, written contracts should be prepared with a view to clarifying the ownership of intellectual property rights.

### **Rights of Civil Servants to their Own Works**

Works created by civil servants in their own time and at their own expense may be exploited privately. (However, CSRs relating to outside employment may apply.) Nominally, civil servants are on call to the Government all of the time. But the Government would only claim ownership of the rights from a work created privately by a civil servant if it could be said that his employment contemplated the creation of such works. Thus a civil servant employed to create an advertising campaign would not be able to claim a personal right in his output just because he created it during his lunch-break or in the evening at home.

### **Patents for Inventions by Civil Servants**

Inventions made by civil servants in the course of their employment belong to the Government. However, civil servants are entitled to a fair share of compensation for any benefits received by the Government from the patent for such invention provided that the following conditions are satisfied-

- the patent must be of outstanding benefit to the employer, and
- it should be just in the circumstances that the civil servant inventor should be compensated.

### **Commissioned Work**

Where a design is created pursuant to a commission, the person commissioning the design shall, subject to any contrary agreement between the parties, be treated as the original owner of the design. In respect of copyright work, the ownership depends on the terms of the contract between the parties. In any event, the person who commissions the work has an exclusive licence to exploit the commissioned work for all purposes that could reasonably have been contemplated by the parties at the time the work was commissioned.

## Rights to one's Own Image

No one has an intellectual property right in his or her own image. If a photographer takes a photograph of someone, then all the rights in the photograph belongs to the photographer. This situation changes, however, when the photographer is commissioned to take the photograph. In such case, the ownership of the copyright depends on the terms of the agreement between the parties. Even if a person who commissioned a photograph does not own the copyright, he has an exclusive licence to exploit the photograph in such manner that could reasonably have been foreseen by the parties at the time of commission.

A photograph taken of another person cannot be used, however, to defame the person photographed. For example, where members of the public are incidentally included in a film, they cannot demand compensation from the producer. However, the film must not be edited and published in such a way as to imply that the persons appearing therein are involved in criminal or antisocial activities.

## Public Domain

Intellectual property which is not protected is said to be 'in the public domain'. There are two main reasons why this may occur.

- the statutory period for the protection of the intellectual property may have expired. For example, a patent will protect an invention for only 20 years. After that, the invention is in the public domain;
- the creator might have decided from the start to give up all his rights and allow his intellectual property to be freely exploited by the whole world. (Certain computer program, known as 'freeware' are created on this basis).

Remember that intellectual property is not in the public domain just because the creator is anonymous, or has died, or cannot be found and asked for permission.

The periods of protection available for different sorts of intellectual property can be complicated. Here are general rules of thumb-

- Copyright protects literary, dramatic, musical or artistic works or films during the lifetime of the author or the principal director, screenplay author, dialogue author or theme music

## Implied licence

composer, as the case may be, plus 50 years. On the other hand, the duration of copyright protection for sound recordings, broadcast or cable programmes is 50 years from making, release, broadcast or inclusion in a cable programme service.

- Patents are protected for a maximum of 20 years from the day an application for grant of the patent was filed. There are also short-term patents with a protection period of just eight years.
- Registered Designs are protected for a maximum of 25 years from the day an application for registration of the design was filed.
- Trade Marks can be protected indefinitely, as long as the owner continues to trade in the trademarked goods or services, and maintains his mark on the register.

Even where intellectual property is recognized in the law, it is sometimes permissible to use it, even without specific permission. This is because the owner of the right may have implied by his conduct that another person can use it. For example, if a newspaper editor received a 'letter to the editor', he is entitled to publish it because he can assume that the sender had publication in mind when he sent it. That is because publication of letters to editors is a normal custom in Hong Kong.

On the other hand, someone who writes a letter to the Government would not normally presume that his letter will be published. On the contrary, he might reasonably assume that his letters will be treated in confidence. Thus the Government does not normally have any implied licence to publish letters it receives. (Note, however, that some ordinances empower the Government to publish things it receives. In that case, copyright would not be infringed.)

## Creative Projects

Therefore, if written responses are invited from the public and it is contemplated that they will be published in a report, it is necessary to make that very clear at the time when responses are solicited.

Note also what has been said above about commissioned works. We have previously discussed that where a party commissioned the making of a copyright work, he has an exclusive licence, implied by law, to exploit the work in a manner that could reasonably be within the contemplation of the parties.

### **Shows, Exhibitions and Performances**

The Government organizes a number of exhibitions and performances each year. It also provides direct financial sponsorship for such activities.

Because of our legal responsibilities and because we need to demonstrate correct leadership, it is unacceptable for the Government to include any material in its shows or exhibitions which infringe intellectual property rights. We should always go the extra mile to ensure that all activities we organize are done with proper respect for intellectual property rights. The Government has no licence to cut corners.

It is very easy to ensure that the necessary permissions are obtained for musical and dramatic performances. Please consult the collecting societies listed in the Annex to this booklet.

Displays of trade marks in connection with the Government activities may infringe the rights of the owners of the marks. If you consider there is any risk, it is better to seek permission from the owner first.

If you plan to hold a competition and then display, exhibit or use winning entries afterwards, you must make it very clear at the outset that you plan to do so. For example, if you hold a slogan competition, the winner could prevent the Government from using the slogan for its activities if the arrangement had not been clearly set out in advance.

If you commission a work for Government publicity, you should provide explicitly in your contract for how the work will be used.

### **Protecting Novelty in Patents and Designs**

If the Government wishes to protect an invention with a patent, or to register an industrial design, it is vital that the invention or design be new. That means, in effect, that the invention or the design must be kept secret until the time an application to register it has been validly made. For this reason, you should never put a Government industrial design or invention into an exhibition before you have either filed a valid application to register it, or have consciously decided for whatever reason not to protect it. Once made, such decisions would be irrevocable. (There are some exhibitions specified in Hong Kong's Patent and Design laws

where this rule does not apply: but they are very rare.)

If you plan to sponsor an inventors' or designers' exhibition, it is only fair that you try to avoid a situation where the public participants lose economic benefits because of taking part. You should make the public aware of the points in the previous paragraph before inviting their participation.

### **Publicity Materials**

Sometimes we may wish publicity materials to be freely copied and distributed by those who receive them. (For example, practice notes distributed to professional bodies.) If it is the specific intention not to seek protection of the intellectual property rights in a particular piece of Government material, we recommend this be made clear. You can print 'This brochure can be copied, distributed or broadcast freely.'

On the other hand, we may wish to preserve the Government's rights to works which could subsequently have commercial value. For example, a teaching kit could be copied and exploited commercially by a third party if we do not reserve the Government's rights.

## **INTERNET Web Sites**

If the material consists of copyright works, there is no need to register the Government's rights. But at the very minimum, we advise that the following be displayed prominently on the material: 'Copyright Hong Kong Special Administrative Region Government, 1999'. The year should be the year (not date) of first publication. 'Copyright' can be replaced by '( '. Note that such a notice is not compulsory: it advises the reader that the Government intends to protect its copyright.

There can be more complex rights to administer under copyright law than what was described in the previous paragraph. For example, the Government can retain the right to be acknowledged as the creator of a copyright work, or permit copying but not broadcasting. This requires additional steps and you should obtain advice from the Intellectual Property Department.

### **Guarding against Infringing Copyright of Others**

Works on the INTERNET can be protected by copyright. Normally, copyright works may not be copied without permission (even into computer memory). However, if a transient and incidental copy is made and such copying is technically required for the viewing of the work, it would not be an infringement. That means, browsing on the INTERNET is permitted in our copyright law.

Making available copies of a copyright work to the public without the consent of the copyright owner is not allowed. 'Copies' does not only mean 'hard copies': making copies available to the public also includes doing so through the INTERNET.

Therefore, departments who place any materials on Web pages (including text, graphics, photographs or sounds) without the permission of the copyright owner are infringing copyright.

It could arguably be a copyright infringement to place a hypertext link to another web site (i.e. someone else's copyright work) without permission. In the circumstances, we recommend that you seek permission from the webmaster of another site before making a hypertext link to it.

Only use other people’s trade marks or logos with permission. Apart from a slight possibility that doing so would infringe the trademark right, there is also a significant chance of infringing copyright in the mark or the logo.

Do not limit your concern for intellectual property rights to Hong Kong law: the INTERNET does not recognize geographical boundaries. The Hong Kong Government may be found liable for infringement under foreign law in any country in which your material is available through the INTERNET.

**Protecting your Copyright on the INTERNET**

Copyright can be protected in Hong Kong and virtually the whole of the rest of the world without need for registration, and placing a copyright notice is not obligatory. The latter may help, however, to make it clear that an owner does want to enforce his copyright. If you place a copyright notice, you should include the word ‘Copyright’, the name of the right-owner, the year and the place where the work was first made public. You may put in additional words to make the use of your copyright work conditional (e.g. “This page may be copied to facilitate public consultation purposes only, and may not be included as part of any other

publication.” Or “This page may be copied or included in another publication, provided that the following notice included: ‘Copied from the Hong Kong Government WWW Page at (.’”) But make your notices simple and easy to understand.

On a practical level, providers of materials on the INTERNET WWW should be aware that enforcement of Government’s rights outside Hong Kong will be difficult, if not impossible in many cases. Starting from this point, some departments and bureaux may consider it worthwhile (and gain some goodwill) to explicitly disclaim copyright and let people copy the work as they wish. In any case, assume that even if you wish to enforce, it will be hard to do so cost-effectively outside Hong Kong, so please don’t put Government’s commercially-valuable works on the WWW.

Never place material on the INTERNET which may form the potential basis for a patent for an invention or an application for registered design. Publishing details on the WWW will prejudice any chance of gaining a patent or registering the design.

# Information and Management

## Copying of Books and Articles

In normal circumstances, the copying of the whole or a substantial part of a book or an article infringes the author's copyright. There is no hard and fast rule about what constitutes 'a substantial part.' 'Substantial' in this context relates much more to the quality of what has been taken than to the quantity. For example, even a few bars of music may be a substantial part of a musical work if they constitute a recognizable reproduction of an essential part of the melody.

## Press Cuttings

It is permissible to produce a summary of press reports as the Government does every day; provided there is no substantial copying of the original text of the article. (The summary itself can be a copyright work in its own right.) However, to make copies of whole articles and distribute them infringes copyright. (Press 'cuttings' means just that cuttings. Not copies.) If you wish to make arrangements to distribute copies of articles, you can seek permission of the publisher to do so. You can expect to be charged a fee for it.

## Music and Video in public places

The performance or broadcasting of music or video in a public place (e.g. muzak in a Government office or lift) needs the permission of the rights owners. This can be obtained from the collecting societies (see Annex). You can expect to pay a royalty payment. However, copying a broadcast solely for the purpose of viewing it privately at a different time does not require the right-owner's permission.

## Music in the Workplace

The workplace is not 'private'. If you wish to broadcast background music to staff in the workplace, you must obtain a licence. You can do so by contacting the collecting societies and paying a royalty. (See Annex.)

## Public Administration

To facilitate public administration, copyright is not infringed by anything done for Legislative Council and judicial proceedings and for statutory inquiries. Copying of materials open to public inspection or on an official register, or of materials communicated to the Government in the course

of public business, or of materials comprised in any public records, may be permitted in appropriate circumstances. Any act done under statutory authority is also exempted.

**Trade Marks and Government Logos**

Trade Mark law protects names and logos used in the course of trade in goods or business providing services. If a Government organization wants to register its logo or name as a trade mark, it will need to show that its activities constitute trading or a business.

The fact that a Government logo is not registered does not mean that anyone can copy it freely. A logo is likely to be protected by copyright (which needs no registration anyway), and misleadingly trading on the Government’s name could amount to fraud.

By the same token, Government logos should not conflict with trademarks which are already registered. ‘Conflict’ is not just ‘identical to’: it extends to mean sufficiently similar, or giving a similar overall impression to the consumer, so that the consumer could be misled about the source of goods or services.

IPD may, if necessary, help departments and bureaux to ascertain whether their proposed names or marks are likely to conflict with registered marks and advise generally on registrability of their marks. However, since the Director of Intellectual Property is also the Registrar of Trade Marks, Patents and Designs, IPD is unable to advise on specific applications for registration of trade marks, designs or patents filed or to be filed by bureaux or departments. The Department of Justice should be approached if specific advice is needed.

# Use of Computers

## Copyright in Computer Software

Computer software is protected by copyright. The legal and political consequences which would arise if the Government were found to be using unlicensed computer software would be very serious.

For this reason, the Government has for many years issued circulars and guidelines on the use of computer software in the Government. They can be found in the Management and Support Guide of the 'GAUGE' Guide in the ITG InfoStation, web site (<http://www.ifginfo.gov.hk/>) offered by ITSD.

It is, however, worth repeating here some of the guidelines to Government Officers in respect of their use of computers in Government work.

- All Heads of Departments and Bureaux are responsible for ensuring that all software used on computers under their purview are operating only with fully licensed software;
- No software licensed personally to a Government Officer may be loaded and run on a Government computer without permission of the Head of Department or Bureau;
- A Government officer may not bring his own personal computer to the office to carry out Government work;
- No officer may copy software licensed for Government use for his personal use;
- Software may not be downloaded from the INTERNET to run on Government computers without the licence of the copyright owner and permission of the Head of Department or Bureau;
- Heads of Departments and Bureaux are expected to budget realistically for sufficient computers and licensed software to permit their departments to deal with their normal workload without contributions from officers' computers at home. This may involve purchase of some portable computers;
- Heads of Departments and Bureaux should regularly take active measures to ensure that Government regulations on computer software are being complied with. If individual officers are found to have breached regulations, disciplinary action should be considered;
- Managers of Local Area Networks (LAN Managers) are responsible to Heads of

## Education

Departments or Bureaux for ensuring that necessary network licences for software have been obtained, and that any special conditions are complied with.

Departments and Bureaux should, of course, ascertain the rights they have been granted in respect of computer software. For example, some software companies provide in their licences that their software may be loaded both on a portable computer and a desk-top computer.

### **Protection of Material on the INTERNET**

For reasons set out above under the heading “INTERNET Web Sites”, we advise that bureaux and departments should not place commercially valuable works on the WWW. Also, you should never place materials on the INTERNET which may form the potential basis of a patent application in respect of an invention.

### **Technical Advice and Assistance**

Government bureaux and departments should seek technical advice and assistance from Information and Technology Services Department where appropriate.

### **Copying for Education and Training**

Government schools, prisons, social welfare facilities and civil service training facilities all carry out bona-fide educational work and may for that purpose, do certain acts which would otherwise be restricted by copyright.

Educational copyright exceptions include:

- things done for purposes of instruction (exclude copying by reprographic process) or examination;
- compilation of anthologies for educational use;
- performing in the course of activities of educational establishments;
- recording by educational establishments of broadcasts and cable programmes\*; and
- certain reprographic copying made by educational establishments of limited passages from published works\*.

(The exceptions marked with an asterisk only apply if licences under licensing schemes are not available authorizing the copying or recording in question.)

Librarians may, under prescribed conditions, copy and supply articles in periodicals and parts of published works to the public. They may also, under prescribed conditions, copy and supply an article, a published edition, a sound recording or film to another library.

#### **Copying for Research or Private Study**

The copyright in a work is not infringed if the potential “infringing act” amounts to fair dealing with a work for the purposes of research or private study. To qualify for this exception, copying should, generally speaking, be done by the researcher or student himself. Where copying is proposed to be done by persons other than the researcher or student himself, the above exception will only be of limited assistance.

#### **Copying for Criticism and Review**

Where the potential “infringing act” amounts to fair dealing with a work for the purpose of criticism or review of that work, it will not be considered as an infringement provided that it is accompanied by a sufficient acknowledgement.

#### **Public Education**

Publicity campaigns for the purpose of public education will not normally qualify for the limited exception to copyright explained in the previous paragraphs because they are not being carried out in the context of the normal activities of an educational establishment (which has a statutory definition).

# Contracts

## **Intellectual Property Rights in Public Contracts**

Each year, the Government enters into billions of dollars' worth of public contracts. As the commissioning party for the creation of many new works, inventions or designs, the Hong Kong public has the right to expect its rights to be secured.

It should normally be the case that when the Government commissions a contractor or consultant to create new intellectual property on its behalf, the public, through the Government, should enjoy the benefit of all such rights.

For this reason, it is important to ensure that Government contracts contain express provisions to the effect that all new intellectual property rights created as a result of the Government's commission should be owned exclusively by the Government.

## **Use of Third Party Rights by the Government**

The Government must be careful in preserving the rights of contractors as well. For example, the Government might call for expressions of interest from different parties to carry out a project. It is not an acceptable commercial practice to take the proposals put forward in confidence by one contractor in his expression of interest and then ask another, lower priced contractor to carry them out. In law, to do so might infringe the rights of the bidder to his confidential information.

## **Proper Preparation of Contract Conditions**

Intellectual property rights are private rights, and it is open to the parties to a contract to arrange them as they see fit. However, those preparing contracts sometimes pay insufficient attention to setting out how the parties wish to apportion their rights.

## Role Models

If the contract is expected to result in new designs or inventions, it is important to make provisions ascertaining which party they will belong to and for maintaining secrecy until the necessary patent or design applications have been made.

If the contract will result in the creation of copyright works, again it is necessary to make sure it is clear who the copyright will belong to. Rights can be pinned down to different types of media. For example, it is preferable to set out whether the rights are reserved for copying, publication, performance, broadcasting, electronic delivery or other media.

Advice on contract conditions relating to intellectual property for Government contracts can be obtained from the Intellectual Property Department.

### **The Government as a Role Model**

The protection of intellectual property is important to Hong Kong's economy. No-one will take our commitment to protecting intellectual property seriously if the Government does not appear to be taking the matter seriously itself.

At present, the HKSAR Government has a good reputation for control and management of intellectual property. In the main areas-use of software, licensing of musical and audio-visual performances and proper regard for patent, trade mark and design rights, the Government has not faced any serious problems.

But with thousands of computers, a wide range of activities, and nearly 190,000 individual civil servants, it is important to keep up our vigilance and never to let standards drop. The discovery that even a single Government employee had produced Government work using pirated software or had misappropriated a copyright work for a Government campaign would do great damage to our reputation, regardless of how well-intentioned the original act had been.

# Compliance Officer Scheme

We therefore remind the Hong Kong civil service that we should regard ourselves as role-models for Hong Kong society in the respect of intellectual property rights. We should go the extra mile to achieve the highest standards.

## **The Individual Government Servant as a Role Model**

The behaviour of individual Government employees in their private capacity is a more sensitive matter. The Government does not wish to interfere with individual employees' private lives.

But we appeal to individuals to set a good role model. Government staff should not appear in the workplace or in public knowingly wearing counterfeit clothes or accessories.

## **Role and Responsibility**

'Compliance Officers' are Department and Bureau staff entrusted with the responsibility to assist the Head of Department or Bureau to ensure that the standards and guidelines in this handbook are adhered to.

The officer should be appointed at a rank sufficient to be able to request monitoring of computer equipment and activities at all levels of their organization for compliance.

Their activities will involve the following -

- attending training and up-dating activities organized by IPD;
- briefing staff of the aims and contents of this handbook;
- ensuring that departmental training covers the Government's IP compliance standards;

## Further Advice and Assistance

- maintaining a software inventory record;
- carrying out computer hard-disk audits to ensure that computer software is licensed and is being used in accordance with the license conditions;
- regularly reviewing compliance issues with department LAN managers;

being the first point of contact in departments to advise on minor IP compliance matters, and helping their departments to seek further advice from IPD if necessary.

### Accountability

IP compliance officers will be accountable to Heads of Departments and Bureaux.

### Legal Advice in Specific Cases

Government bureaux and departments should seek advice from Intellectual Property Department if they are in doubt about their rights and liabilities in specific cases relating to intellectual property.

### Training

IPD will arrange general training. Workshops will also be arranged with organizations such as CASH, IFPI (International Federation Of Phonographic Industries), the Business Software Alliance and the Software Publishers' Association.

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