

**立法會**  
**Legislative Council**

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(These minutes have been seen  
by the Administration)

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**Subcommittee to study  
the Organized and Serious Crimes Ordinance  
(Amendment of Schedule 1) Order 1999**

**Minutes of the second meeting  
held on Wednesday, 1 December 1999 at 8:30 am  
in Conference Room A of the Legislative Council Building**

**Members present** : Hon Mrs Selina CHOW LIANG Shuk-ye, JP (Chairman)  
Hon MA Fung-kwok  
Hon CHAN Kam-lam  
Hon SIN Chung-kai

**Member absent** : Hon James TO Kun-sun

**Public officers attending** : Mr Philip CHAN  
Principal Assistant Secretary for Trade and Industry

Mr Vincent POON  
Assistant Commissioner of Customs & Excise

Miss Betty CHOI  
Senior Government Counsel

Mr Johann WONG  
Assistant Secretary for Trade and Industry

**Attendance by invitation** : **Optical Disc Manufacturing and Technologies  
Association Limited**

Mr Thomas LEE  
President

Mr Andy KWOK  
Vice-President

**Hong Kong Optical Disc Manufacturers Association**

Mr William WAN Kam-keung  
Chairman

**International Federation of the Phonographic Industry  
(Hong Kong Group) Ltd**

Mr Ricky FUNG  
Chief Executive Officer

Mr Sean MOK  
IFPI-Asia Deputy Director

**Music Publishers Association of Hong Kong Limited**

Ms Jane ENGLISH  
Chairman

**Business Software Alliance**

Ms Chuan Chuan LAI  
Coordinator

**Software Publishers Association**

Ms Grace CHU Hing-wah  
Legal Adviser

**Motion Picture Association**

Mr Jeffrey J HARDEE  
Vice-President

**Motion Picture Industry Association**

Mr Woody TSUNG  
Chief Executive

**UA Cinema**

Ms Vicky WONG  
Film Booking Manager

**Movie Producers and Distributors Association of  
Hong Kong Limited**

Mr Joseph LAI  
Vice Chairman

Mr Tony SHU  
Committee/Executive Secretary

**Clerk in attendance :** Mrs Mary TANG  
Chief Assistant Secretary (1)6

**Staff in attendance :** Miss Anita HO  
Assistant Legal Adviser 2

Ms Rosalind MA  
Senior Assistant Secretary (1)9

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**I. Meeting with Deputations**

Optical Disc Manufacturing and Technologies Association Limited (ODMTA)  
(LC Paper No CB(1)477/99-00(01))

With the aid of an overhead projector, Mr Thomas LEE briefed members on the normal operational flow of the optical disc factories. Mr LEE said that in view of the difficulties in tracing the chain of title of copyrights, particularly those from the Mainland and other Southeast Asian countries, optical disc manufacturers had been victimized and made scapegoats for piracy offences. He urged the Government to provide support in copyright verification by establishing a copyright authentication centre which provided authenticating services and copyright information to the trade. This suggestion was supported by all the 58 respondents of the survey conducted by ODMTA in November 1999 when questionnaires were sent to 92 optical disc manufacturers in Hong Kong. He further pointed out that the manufacturers had been having a hard time meeting the requirements of copyright legislation. The introduction of the Organized and Serious Crimes Ordinance (Amendment of Schedule 1) Order 1999 (the Order) would pose further difficulties to and threaten the growth or even survival of the industry. In this regard, he requested that special exemption be granted to exclude optical disc manufacturers from the application of the Order. This request was supported by 98% of the respondents of the survey. Moreover, he requested the Administration to provide guidelines on copyright verification.

Hong Kong Optical Disc Manufacturers Association (ODMA)  
(LC Paper No CB(1)477/99-00(02))

2. Mr William WAN, Chairman of the Association, said that although the

Association had a smaller number of members, it had been set up with a longer history. He considered that copyright protection was necessary and assistance should be provided in verifying the authenticity of authorization documents. It was in support of the introduction of the Order and did not agree with ODMTA on the need to exempt the optical disc manufacturers from the application of the Order since the law should be equitably applied to all. For the same reason, the Association would not support any legislation which would target against optical disc manufacturers. He pointed out that due diligence should be exercised by the manufacturers in verifying the authorization documents before accepting orders.

International Federation of the Phonographic Industry (Hong Kong Group) Limited (IFPI)

(LC Paper No CB(1)477/99-00(02))

3. Mr Ricky FUNG, Chief Executive Officer of IFPI, gave full support to the Order as it would provide additional legal tools for the investigation of piracy and counterfeiting offences. The Order would enable more effective enforcement actions against piracy and counterfeiting offences where organized crimes might be involved. He did not think that the Order would worsen the trading environment of the industry. Exemption from the application of the Order should not be granted to any sector of the community as the law should be equitably applied to all. Nevertheless, IFPI would render every possible assistance to the manufacturers in the verification of authorizations.

Music Publishers Association of Hong Kong Limited

(LC Paper No CB(1)477/99-00(02))

4. Ms Jane ENGLISH, Chairman of the Music Publishers Association of Hong Kong Limited, expressed support for the Order on behalf of members of the Association, who were music publishers owning the copyright of music works. She said that 60% of the song writers' and composers' income came from the sale of their musical discs. Therefore, it would be necessary for the Administration to step up enforcement actions against piracy offences so that the interest of the musical workers could be protected. With reference to the joint submission of the Hong Kong Copyright Alliance (HKCA), she reiterated that the copyright-based industry had expressed supportive views to the inclusion of piracy offences in Schedule 1 of OSCO.

Business Software Alliance (BSA) and Software Publishers Association (SPA)

(LC Paper No CB(1)477/99-00(02))

5. Ms Grace CHU said that BSA and SPA supported the Order. She opined that piracy offences could not be effectively eliminated if organized and serious criminal elements continued to involve in this illicit trade. She also pointed out that the objection raised by ODMTA on the ground of the difficulties encountered by manufacturers in verifying the authorization was in fact not related to the introduction of the Order. It should be the optical disc manufacturers' responsibility to ensure that

proper authorization had been given by the copyright owners before they accepted orders for the production. In view of the special nature of the industry which involved the production of copyright items, members of the industry should work together in developing a set of proper procedural guidelines for the verification of authorization. BSA and SPA would be willing to offer assistance to the manufacturers and arrange meetings with them for the establishment of such guidelines. However, she said that it was inappropriate to discuss issues relating to copyright verification at meetings of this Subcommittee as it was formed for the purpose of studying the Order only.

Motion Picture Association (MPA)  
(LC Paper No CB(1)477/99-00(02))

6. Mr Jeffrey HARDEE also supported the Order. He said that MPA offered free and speedy services in providing copyright information for title verification and it would be ready to work with ODMTA in this respect. Other movie producers and distributors such as the Motion Picture Industry Association and the Movie Producers and Distributors Association of Hong Kong Limited would certainly work together with MPA for the establishment of mutually acceptable procedures for copyright verification. He pointed out that copyright verification was a worldwide problem and suggested that ODMTA should draw reference from the established practices of other countries in the procedures for verifying authorization.

Motion Picture Industry Association (MPIA)  
(LC Paper No CB(1)477/99-00(02))

7. Mr Woody TSUNG opined that additional legal tools should be provided to law enforcement agents to tackle the problem of piracy offences where organized crimes were involved. Therefore, he supported the Order which proposed inclusion of piracy and counterfeiting offences to Schedule 1 of OSCO and considered this an appropriate move in the fight against piracy. He urged the optical disc manufacturers to approach MPIA for copyright information which was compiled in its database and ready for retrieval upon enquiry.

UA Cinema  
(LC Paper No CB(1)477/99-00(02))

8. Ms Vicky WONG explained that the cinema business in Hong Kong had been deteriorating in the past year as a result of the large number of piracy offences involving the reproduction of optical discs for movies. Compared with 1998, there had been a 35% drop in business up to the end of October 1999. Despite efforts of the copyright-based industry in combating piracy which included the formation of the Anti-piracy Alliance, piracy activities had still been rampant. As a member of the Hong Kong Theatre Association Limited, she expressed support for the introduction of the Order. She hoped that with more effective legal tools to combat piracy, more people would go to the cinemas instead of purchasing cheap but low quality pirated

optical discs.

Movie Producers and Distributors Association of Hong Kong Limited (MPDA)  
(LC Paper No CB(1) 477/99-00(03))

9. Mr Joseph LAI, Vice Chairman of MPDA, supported the inclusion of piracy and counterfeiting offences in Schedule 1 of OSCO for the provision of additional legal tools for combating piracy. MPDA had clearly indicated its view in this respect in its submission to the Administration in April 1999 in response to the public consultation paper on combating intellectual property rights infringement.

## **II. Meeting with the Administration**

(LC Paper No CB(1)477/99-00(04))

10. The Principal Assistant Secretary for Trade and Industry (PAS/TI) briefed members on the information paper which was prepared in response to members' requests at the first Subcommittee meeting held on 22 November 1999. The paper covered the following concerns -

- (i) On the provision of code of practice for manufacturers for verification of authorization, a check list of practices which had been adopted by some optical disc manufacturers was provided in the paper. However, the Administration could not undertake that prosecution action would not be taken if all the suggested procedures had been followed. The manufacturers would still bear the ultimate responsibility of verifying the authorization of the copyright item before accepting an order for production. In case of doubt concerning the authenticity of the authorization, manufacturers should refuse to accept the order;
- (ii) As regards the arrangement for the optical disc manufacturers to request their customers to indemnify them from claims of copyright infringement by means of the issuance of a letter of warranty, the Administration pointed out that this was purely a commercial arrangement between parties concerned. It would be inappropriate for the Administration to advise on the form of the indemnity; and
- (iii) On the request for a contact list of Mainland publishers/copyright owners, the Administration advised that it was stepping up liaison with the Mainland authorities on the issue of copyright verification. The difficulties encountered by manufacturers would be reflected to the Mainland authorities. However, international treaties on the protection of intellectual property rights stipulated that copyright protection should not be subject to any formalities. Any statutory registration requirement would therefore contravene these international standards. Given that there were no legal obligations for the copyright owners and licensees to

register their rights, it was not possible for any government to maintain an up-to-date register of all copyright works taking into account the vast amount of titles involved and the complete freedom on transfer of ownership.

Proper procedures for manufacturers in verification of authorization

11. Mr SIN Chung-kai sought clarification on whether manufacturers could be indemnified from claims of copyright infringement through the procurement of a letter of warranty from their client. Mr Thomas LEE responded that this had been their usual practice but was becoming obsolete as the letter of warranty was not recognized by the Customs and Excise Department (C&ED) as documentary proof of authorization. He also pointed out that more than half of their productions involved copyright items from the Mainland or Southeast Asian countries of which the chain of titles were hard to trace. He hoped members would appreciate the difficulties faced by optical disc manufacturers in meeting the requirements of existing copyright legislation. He said that the manufacturers did not oppose to the principle of the Order, but was worried the Order would pose additional difficulties to the industry.

12. The Chairman opined that the difficulties in copyright verification by manufacturers were more related to the enforcement of copyright legislation rather than the introduction of the Order which should be the focus of discussion of the Subcommittee. She suggested that manufacturers' concerns be further considered at the meetings of the Trade and Industry Panel. The industry should formulate a set of guidelines for verifying authorizations and exercise due diligence in the process.

13. On the recognition of warranty letters as documentary proof of copyright authorization, the Assistant Commissioner of Customs & Excise (AC/CE) explained that the C&ED officers were not looking for any particular format for proper documentary proof of authorization. Instead, the crucial point was whether there was adequate proof on the authenticity of the authorization, i.e. whether the individual who placed the order was in possession of a valid authorization from the copyright owner. AC/CE pointed out that some factories had set up a special department for the authentication of authorization. However, other manufacturers were less mindful on the issue of authentication. There were cases in which the manufacturers possessed only incorrect or non-existent telephone numbers and office addresses of the companies placing the order. These cases have suggested that some manufacturers had not exercised due diligence in scrutinizing the authorization before accepting an order. PAS/TI added that the authenticity of authorization documents should be assessed on a case-by-case basis and the final decision rested with the courts.

14. Mr MA Fung-kwok sought information on the normal operational flow of the manufacturers in the course of accepting an order. The information requested included whether a contract was signed, what type of authorization document was requested and whether information like the bank account numbers were exchanged between the two parties concerned. Mr William WAN of ODMA said that the afore-

mentioned were all normal commercial procedures which the manufacturers would usually follow. Mr Thomas LEE of ODMTA advised that not all manufacturers completed all these procedures. The manufacturers would try to verify the authenticity of the authorizations with relevant organizations. In the event that the chain of titles could not be traced, the credibility of the individuals or the companies placing the order would be assessed. Orders from unknown individuals and companies with unknown business transaction record would not be accepted. On the method of delivery and means of payment, Mr LEE said that the discs would be delivered to the one who placed the order and payment into the manufacturer's bank account would be requested before delivery. Mr Jeffrey HARDEE of MPA requested manufacturers to check more carefully the authorization documents in respect of orders which were settled by cash payment.

#### Assistance to be provided to the optical disc manufacturers

15. Mr CHAN Kam-lam expressed concern over the difficulties of the manufacturers in verifying authorization and opined that more information in this respect should be provided to the Council by manufacturers and copyright-based industry. The Chairman sought information from ODMTA on the adequacy of assistance provided by copyright-based industry.

16. Mr Thomas LEE of ODMTA said that the copyright-based industry had been providing assistance to manufacturers and ODMTA was liaising with the industry on the introduction of more simple procedures for verifying authorization. However, since over 50% of their productions were originated from the Mainland or other Southeast Asian countries, the chain of title was difficult to trace.

17. PAS/TI said that manufacturers' interest could be protected if they could adhere to prudent procedural safeguards and good trade practices for verifying authorization. Where there was doubt on the copyright authorization, consideration should be given to refusing the acceptance of the order. Moreover, there were defence provisions under Section 118(3) and (5) of the Copyright Ordinance which provided protection to persons who did not know and had no reason to believe that the copy or article in question was an infringing copy of copyright work. Regardless of whether the Order was introduced or not, it remained the ultimate responsibility of the manufacturers to verify authenticity of the authorization document before accepting an order. As to ODMTA's suggestion of setting up a central copyright authentication centre, PAS/TI reiterated that this was not a practicable arrangement as it would be contravening the international treaties on the protection of intellectual property rights to impose a compulsory requirement on registration of copyright. It was also impossible for the government to maintain an up-to-date register of all copyright works.

18. In response to Mr MA Fung-kwok's enquiry on the efforts made by manufacturers in the verification of authorization before acceptance of an order, Mr Thomas LEE of ODMTA said that they had tried their best to verify the authorization.

However, manufacturers would still be subject to inspections by C&ED officers even though proper authorization document had been obtained. Mr William WAN of ODMA said that though they had encountered certain difficulties in verifying the authorization, the problem was not too serious. He pointed out that the trade was involved in the production of copyright items and thus should be copyright sensitive. Adequate training and proper guidelines should be given to staff on the procedural safeguards in the acceptance of orders. Nevertheless, it was sometimes very difficult to trace the chain of title of copyright items originated from the Mainland. He sought the assistance of the Administration in liaising with relevant Mainland authorities in this regard.

19. Mr Jeffrey HARDEE of MPA appreciated the manufacturers' concern on verification of authorization and agreed that internal procedural guidelines for the verification should be developed. However, this should not distract the focus of discussion of the Subcommittee which was formed to consider the inclusion of piracy and counterfeiting offences to Schedule 1 of OSCO. Mr Tony SHU of MPDA explained that MPDA had been providing speedy services in the verification of authorization. He believed that all members of the copyright-based industry would be willing to offer assistance to manufacturers in verifying the authenticity of the authorization. Mr Ricky FUNG of IFPI said that IFPI had a register of nearly all the popular music in Hong Kong and overseas and they could provide some comprehensive information on the copyright ownership of popular music. Ms Jane ENGLISH added that the Music Publishers Association of Hong Kong Limited controlled the copyright of music works. The Association had issued licences to some record publishers and the updated list of the publishers could be provided to the manufacturers on a regular basis.

20. Mr MA Fung-kwok sought information on the number of enquiries handled by members of the copyright-based industry in the past year. Mr Sean MOK of IFPI advised that they had received only three enquiries since the enactment of the copyright legislation. Mr Woody TSUNG of MPIA said that there was an average of two enquiries per month in the past year. Among these, over 90% were related to movies originated from Southeast Asian countries and Japan. MPIA could provide copyright information on locally produced movies as well as some movies produced in the Mainland. Mr Tony SHU of MPDA said that MPDA only received a few enquiries from manufacturers and majority of the cases they handled came from the copyright owners. The copyright owners would approach MPDA for the issue of a certificate on copyright ownership before placing orders with the manufacturers so as to relieve the latter from the burden of verifying the authorization. Mr Jeffrey HARDEE of MPA said that there were around 40 enquiries received by MPA in the past year.

21. In conclusion, the Chairman invited Mr Thomas LEE of ODMTA to state in brief the justifications claimed by the manufacturers to request for an exemption from the application of the Order. Mr Thomas LEE said that the manufacturers were investing considerable amount of money in the heavy equipment of the factories and were prepared to invest more under the trend of technological development. Licensed

factories were already having a hard time coping with the copyright legislation and meeting the requirements of C&ED. It was unfair that manufacturers had to bear all the responsibilities of copyright infringement while the same had not been applied to retailers. He hoped members would appreciate the difficulties of the manufacturers and support their request for an exemption so that they could have room for survival under the stringent copyright legislation.

22. PAS/TI drew members' attention to the diversity of views expressed by ODMTA and ODMA, both being associations of optical disc manufacturers. He said that the optical disc manufacturing industry should work out a set of procedural guidelines on verification of authorization and reject any order with doubtful authorization to ensure the legitimacy of their business transactions. The copyright-based industry had also expressed their readiness to provide further assistance to the manufacturers. As to the difficulties in verifying authorizations from the Mainland, the Administration was stepping up liaison with its Mainland counterparts and would reflect the manufacturers' concerns accordingly. PAS/TI stressed that it would be contrary to the legal principle to exempt anyone because every one should be treated equally under the law.

### **III. Any other business**

#### Date of the next meeting

23. Members agreed that the next meeting would be held on **Friday, 17 December 1999 at 8:30 am in Conference Room B** of the Legislative Council Building.

24. There being no other business, the meeting was adjourned at 10:35 am.

Legislative Council Secretariat

21 March 2000