

**JOINT SUBMISSION BY
THE HONG KONG COPYRIGHT ALLIANCE**

jointly submitted by

Business Software Alliance
Hong Kong Optical Disc Manufacturers Association
HMV
International Federation of the Phonographic Industry - Hong Kong Group
Motion Picture Association
Motion Picture Industry Association
Music Publishers Association of Hong Kong
UA Cinema

**to the Sub-Committee of Organized and Serious Crimes Ordinance
(Amendment of Schedule 1) Order 1999
Legislative Council
HKSAR**

Background

This paper is jointly submitted by copyright-based industry associations and companies of the Hong Kong Copyright Alliance (HKCA) listed above. Participants of this submission are very concerned with the latest development in the Legislative Council, in which members of the Council have received views opposing the order to amend the Organized and Serious Crime Ordinance (OSCO). HKCA strongly support the current amendment and, indeed, the copyright-based industries have been advocating the inclusion of copyright offences in Schedule 1 of OSCO for the last few years.

The plead to include copyright offences in OSCO was one of the main requests made by the copyright-based industries in the Anti-Piracy March, which took place on 17 March this year. The same request was also made in our jointly submitted White Paper to the Chief Executive in April. Meanwhile, almost all copyright-based industries in Hong Kong have expressed supportive views of the amendment in their submissions to the Government for the consultation paper "Combating Intellectual Property Rights Infringement in the HKSAR: Possible Additional Legal Tools" issued by the Trade and Industry Bureau. The industry, government officials and legislators have on many occasions discussed details of the amendment.

In order to facilitate discussions in the Sub-Committee, we would like to re-emphasize some of the main points we made in our previous submissions to the Government. This submission will briefly outline what the industry has done to protect their own rights by establishing risk-conscious business practices.

The Industries' Prospective of the Current Piracy Situation

Copyright-based industries contribute enormously to Hong Kong's economy and are important for its future prosperity.

- The local movie industry is recognized at home and abroad for its excellent films and acting talent
- The local music industry boasts famous artists and is credited with the widespread popularity of local talents around Asia
- The computer software industry generates substantial employment in Hong Kong and has the potential to expand sharply
- Hong Kong also serves as the regional hub for many multinationals engaged in copyright-based industries

Unfortunately, these achievements and future potential of Hong Kong as a major player in the world intellectual property market are threatened by optical discs piracy. The HKCA appreciates the efforts taken by the Hong Kong Customs in eradicating street-level piracy, but we believe that the battle is not yet over and more aggressive steps must be taken. Steps to be taken must include effective legal tools that can assist enforcement officers in getting to the root of the problem.

HKCA strongly supports the amendment because we believe that copyright piracy-from unauthorized replication of optical discs to their distribution, smuggling and retailing - cannot be effectively combated if organized and serious criminal elements continue to involve in this illicit trade.

The additional powers granted by the OSCO to enforcement officers are essential because the enormous profits that can be made from the illicit trade are extremely attractive to criminal syndicates. The following figures of seizure released by the Customs demonstrate the extent of the problem:

	<u>1998</u>	<u>1999(Oct')</u>
Total seizure of discs	39million	14million
Total value of seized discs	HK\$960.09m	HK\$250.09m

The current level of penalty stipulated in the Copyright Ordinance is unlikely to provide an effective deterrent to organized criminals as illicit profits that can be made, as indicated by seizure figures, are enormous. Meanwhile, there are ample evidences suggesting copyright piracy has become very organized in a global scale. We believe the additional powers and sanctions stipulated by the OSCO are necessary tools that can be effectively employed by enforcement officers to fight against extensive criminal networks involved in copyright piracy.

Optical Disc Manufacturers and the Copyright-based Industries

In order to protect their own rights and establish mutually-beneficial business practices, the copyright-based industries are keen to cooperate with manufacturers of optical discs. Besides encouraging manufacturers to adopt copyright protection guidelines to minimize the risk of innocently producing infringing optical discs, the following associations, which represent a large portion of producers and distributors of copyright works, are capable of checking dubious orders received by optical disc plants:-

Motion Pictures

- Motion Picture Association
- Motion Picture Industry Association

Software

- Business Software Alliance
- Software Publishers Association

Sound Recordings

- International Federation of the Phonographic Industry - Hong Kong Group

Substantial resources are now available to manufacturers to check the authenticity of reproduction requests. The above associations are reputable trade bodies that represent both local and foreign producers. These associations, either themselves or directly through their members, are capable of providing information related to the authenticity of an alleged copyright authorization submitted to Hong Kong optical disk producers. They are available for inquiries should optical discs producers have doubts about orders they receive.

However, it should be noted that to make sure they are not engaging in any production of infringing materials, each optical discs plant must establish its own order checking system. There are precautions that they must take in order to protect themselves from legal liabilities and checking services provided by copyright-based associations should in no way replace their responsibilities.

Conclusion

We would like to stress again that issues relating to copyright verification should not distract current discussions on the amendment of OSCO. The amendment is aimed at giving enforcement officers the appropriate legal tools to deal with serious and organized crime elements involved in copyright piracy. As for copyright verification, it is the duty of manufacturers as well as copyright owners to work out an ordering system that can protect their respective interests.

Participants of the Hong Kong Copyright Alliance are absolutely united in our view that copyright offences should be placed under OSCO and any delay in the legislative process would only further damage the already struggling copyright-industry. We urge the Legislative Council to pass the amendment speedily.