

**Sub-committee on the Organised and Serious Crimes Ordinance  
(Amendment of Schedule 1) Order 1999**

**Introduction**

At the meeting on 22 November 1999, Members of the sub-committee requested the Government -

- (a) to consider providing optical disc manufacturers with codes of practice/guidelines listing the basic steps required in establishing the authenticity of authorization documents of copyright owners;
- (b) to provide samples of letters of warranty from copyright owners for reference by manufacturers; and
- (c) to consider providing a list of Mainland publishers/copyright owners along with their correspondence addresses and telephone numbers to facilitate manufacturers in checking the authenticity of copyright authorizations.

2. This note sets out the Government's response to these requests.

**The Government's Response**

3. As we emphasized at the meeting on 24 November 1999, it is ultimately the responsibility of the concerned parties to ensure that any business deals are in compliance with the laws of Hong Kong. In this particular case, the onus is on the optical disc manufacturers to verify the authenticity of the authorization of the relevant copyright owners to produce the discs. Failure to do so could amount to an infringement of copyright under the Copyright Ordinance and the offender is liable to prosecution. The information provided below is therefore provided on a without prejudice basis and should under **no** circumstance be taken to absolve the responsibilities of the concerned parties to ensure the legitimacy of their business transactions.

**Check List of Good Practices**

4. There are no hard and fast rules as to how to verify the authenticity of copyright authorizations. However, we are aware that some optical disc manufacturers have adopted certain practices as prudent procedural safeguards -

- Ascertain if a client is the copyright owner, a licensee, a broker or only a sales representative. Request for documentary proof.
- Verify the authorization documents and licensing information with the copyright owner of the respective copyright organization.
- Require the client to provide identification information such as the name, address and telephone number of his employer.
- Screen or inspect the content of the "stamper" disc to check if there is any inconsistency in the copyright information or other irregularities, for example, a movie without its copyright owner's information, computer software programmes from different companies put on one single CD-ROM, etc.
- Refuse to accept the order if there is any doubt on the copyright authorization.

### **"Warranty"**

5. There is no legal obstacle for optical disc manufacturers to request that their customers indemnify them from claims of copyright infringements. However, it is inappropriate for the Government to advise on the form of the indemnity. Independent legal advice should be sought where necessary.

### **Liaison with the Mainland**

6. International treaties on the protection of intellectual property rights stipulate that copyright protection shall not be subject to any formalities. Any statutory registration requirement will therefore contravene these international standards. Given that there are no legal obligations for the copyright owners and licensees to register their rights, it is not possible for any government to maintain an up-to-date register of all copyright works given the vast amount of titles involved and the complete freedom on transfer of ownership. Nonetheless, the Customs and Excise Department is stepping up its liaison with Mainland authorities on this issue and will reflect the difficulties faced by some manufacturers in verifying copyright authorizations from the Mainland.