

Legislative Council Panel on Trade and Industry

Verification of Copyright Authorisations

Introduction

This paper sets out the Administration's views on matters relating to the verification of copyright authorizations.

Background

2. During its deliberations on the Organised and Serious Crimes Ordinance (Amendment of Schedule 1) Order 1999, the Legislative Council Sub-committee noted concerns raised by some optical disc manufacturers regarding copyright verification. It was decided that these should be followed up by the Panel on Trade and Industry as enforcement issues of the Prevention of Copyright Piracy Ordinance.

Prevention of Copyright Piracy Ordinance

3. The Prevention of Copyright Piracy Ordinance was enacted in May 1998 to introduce a licensing system for optical disc manufacturers, and hence preventing copyright piracy at source. All optical disc manufacturers operating in Hong Kong have to obtain a licence from the Commissioner of Customs and Excise and their operation are subject to the licence conditions specified. The Ordinance also requires that all optical discs manufactured in Hong Kong should bear specific “manufacturer’s codes” assigned by the Commissioner. There were 85 registered optical disc manufacturers as at the end of January 2000.

4. Since the commencement of the Ordinance, there have been six cases involving 16 licensed manufacturers suspected of manufacturing pirated optical discs. In most of these cases, the manufacturers concerned have claimed that they did not verify the authenticity of the copyright authorization documents or examine the contents of the optical discs at all before accepting the orders. Investigation of these cases is still in

progress.

5. Some optical disc manufacturers have pointed out that it is difficult for them to verify the authenticity of copyright authorizations. They claim that the procedures for checking copyright subsistence are either unclear or are too cumbersome for them to follow. Some have also suggested a central copyright database be established. However, there are other manufacturers who seem to have had for less difficulty with the current legal requirements.

Consideration

6. At the outset, it should be pointed out that the responsibility to check the authenticity of copyright authorizations has not been created by the Prevention of Copyright Piracy Ordinance. Rather, it is an integral requirement against copyright piracy. Section 118 of the Copyright Ordinance provides clearly that a person commits an offence if he, without the licence of the copyright owner, makes for sale or hire, an infringing copy of a copyright work. The implicit duty on the part of optical disc manufacturers to check the authenticity of copyright authorizations is therefore not new.

7. As with all business transactions, it is ultimately the responsibility of the concerned parties to ensure that they are in compliance with the laws. The onus in this case is therefore on the optical disc manufacturers to exercise due diligence and verify the authorisations before accepting orders and producing the discs. If they have any doubts on the legitimacy of the production orders concerned, they should verify with the copyright owners or the respective copyright organisations.

8. Although each case has to be handled on its own merits and according to its own circumstances, the following sets out some of the practices which have already been adopted by some optical disc manufacturers 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 with the copyright information provided 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 regarding the copyright authorization.

9. We are aware that it may be more difficult to verify the authenticity of authorisations of some Mainland copyright works than those from other origins. Customs have therefore been liaising closely with the State Copyright Administration and the State Press and Publication Administration to reflect the difficulties encountered by some manufacturers. Meetings have been arranged with the two authorities to identify ways to facilitate the verification of Mainland copyright authorisations.

10. The suggestion for a central copyright rights management database should be seen against international conventions on the protection of copyright, which require that the enjoyment and exercise of such rights must not be subject to any formality. Hong Kong has to comply with these international conventions. It would therefore be inappropriate to introduce any such statutory registration requirements. We acknowledge that the US Library of Congress does run a statutory copyright registration system. However, the US requirement extends to US copyright works only. It is sustainable because of the sheer size of the US copyright repertoire. A similar registration system requiring the registration of Hong Kong works only would not be viable or practicable, nor would it serve much useful purpose.

11. The law already provides for defences for copyright offences committed "in ignorance". Section 118 provides, for example, that it is a defence for a person charged with making or dealing with infringing works to prove that he did not know and had no reason to believe that the copies in question were infringing copies. It is of course up to the court to decide whether to accept the proof so advanced.

Advice Sought

12. Members are invited to note this paper.

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