Commerce and Industry Bureau
Level 29, One Pacific Place
88 Queensway
HONG KONG

Attention Ms Laura Tsoi, Assistant Secretary

Dear Madam,

Copyright Ordnance – Consultation Paper on Criminal Liability for end-user Copyright infringement and Related issues

We read with interest the Consultative paper released by the Hong Kong government in November 2001. We made several submissions on these issues in April and May 2001, when the *Copyright (Suspension of Amendments) Ordnance* was before the Legislative Council. We do not seek to repeat the views expressed in those submissions, but attach a copy of the final submission made to the Legislative Council on 22 May 2001 by our Corporate Counsel, as the representative of the International Federation of Reproductive Rights Organisations (IFRRO).

It appears to us from the Consultative paper and our involvement in the debate earlier this year that the major concerns of the Hong Kong government and community with respect to the copying of books, newspapers and journals both in the education sector and the business sector are as follows:

- The fear of criminal sanctions and uncertainty as to the legality of common copying practices in schools and universities.
- A similar fear of criminal sanctions and uncertainty as to the legality of copying newspapers and journals in the business sector, where that copying is incidental to legitimate business activities.
- The desire of the government to comply with its international obligations and take a firm stand on copyright piracy in the region, without imposing impracticable restrictions on the education sector or on the day-to-day information exchange in the commercial sector.
- A need to find a legislative solution to copyright infringements which occur in the use of email and Internet in the education and commercial sector, both as in the course of information exchange, and in the technical process of digital communication.

We suggest that the most effective means of dealing with these issues is the creation of a compulsory statutory licence system in favour of nominated sectors (e.g., education only or education, government and business) with *all* the following features:

1. For single copies for individual users, retention of "fair dealing" provisions, subject to the restrictions necessary to ensure those exceptions are not abused and do not conflict with the rightsholders normal exploitation of the work.

2. If the Hong Kong government decides that some multiple free copying should be permitted, then that exception should be authorised in very limited circumstances.

3. Authorisation of the multiple copying and electronic communication of portions ("reasonable portions") of works on agreement by the participating organisations to pay royalties ("remuneration") for the copying and communication, and to participate in some form of record-keeping or sampling system which will serve as a basis for the distribution of the remuneration to the copyright owners.

4. Provision of protection from civil and criminal liability for users by

(a) Making participation in the scheme compulsory for all copyright owners. If the scheme permits copying of no more than reasonable portions, and only on payment of remuneration, this should be acceptable to copyright owners.

(b) Provision of an effective indemnity for all participating institutions which comply with the payment and record-keeping requirements.

5. Provision of the legislative and administrative infrastructure for the effective collection and distribution of the remuneration paid by copyright users, and a legislative endorsement of that system of collective administration.

6. The Copyright Tribunal should fill the role of determining remuneration and record-keeping or sampling systems where parties cannot agree, and can assist in certifying or determining which organisations are legitimate collecting societies for particular classes of copyright works.

More detailed information and clarification on each of these six points is given below. Models of such a system in common law countries are provided under the copyright laws of Australia and Singapore. The model will increasingly be adopted in European Union countries, as the new copyright exceptions in the recent EU *Copyright Directive* will usually attract payment of *compulsory remuneration* or levies, and collection and distribution of those compulsory payments will be collectively administered.

We cannot emphasise too strongly that an effective statutory licensing system must comprise ***all*** the above features. In particular, if it is desired to create a copyright exception which permit the making of multiple copies of insubstantial portions free of payment, then such an exception must be combined with a system for compulsory recording of and payment for longer extracts.

To expand the free copying exceptions granted to educational institutions without the related remunerable system for longer extracts will not, in our opinion, provide an effective balance of the interests of copyright owners and users. Certainly such an expansion could not be considered to comply with the 3-step test prescribed by article 9(2) of the Berne Convention or article 13 of the Trade Related Aspects of Intellectual Property (TRIPS) Agreement.

1 Fair Dealing Exceptions

The Hong Kong *Copyright Ordnance* currently permits copying by individual users for research or study, news reporting and the other uses regarded as fair dealing exceptions to the rights of the copyright owner. As reprographic copying by educational institutions is specifically excluded from the fair dealing exceptions, a compulsory statutory licence system should not affect those exceptions.

2 Insubstantial Portions

We would emphasise that CAL continues to submit to the Australian government that any quantified "free" copying exception is a breach of the 3-step test. We note that the free insubstantial portion exception was originally introduced into the Australian legislation following the *Report of the Copyright Law Committee on Reprographic Reproduction* in 1976, paragraph 6.67 of which stated:

> *Three of us consider that in non-profit educational establishments provision should be made permitting multiple copying of very limited amounts of works without remuneration … These members recommend this provision which they consider to be desirable for the benefit of education* ***and in general it would permit only an amount of copying in respect of which any royalty would be very small and probably uneconomic to collect****.[Emphasis added] The other member does not support this proposal.*

The development of an effective system of collective administration of educational copying in Australia has meant that it is no longer uneconomic to collect remuneration for multiple copying of insubstantial portions, no matter how small. Indeed, an Australian government's Legal and Constitution Affairs Committee[1] recommended to Parliament in 2000 that this provision be repealed and that all educational copying be remunerated under the statutory licence scheme. This recommendation has not yet been implemented.

The Legal and Constitutional Affairs Committee had before it the result of Australian research which documented the practice in primary schools to distribute 1 to 1½ pages per child per lesson of a few selected texts as work sheets. [2] By the end of the year, most of each selected text has been photocopied and distributed. This pattern of copying is akin to coursepack copying by universities, a use which has been acknowledged by Copyright Tribunals all over the world as meriting a higher remuneration to rightsholders than ordinary multiple copying for educational purposes. It effectively replaces textbooks and is a use for which rightsholders should be adequately remunerated to compensate for the lost textbook sales.

We also note that the reference to international insubstantial copying exceptions in chapter 2.8 of the Consultative paper does not accurately describe the restrictions of those free copying provisions in the copyright laws of Australia and Singapore. In both countries, that exception is confined to two pages of literary and dramatic works only – it does not permit the free copying of musical or artistic works, an article in a newspaper,

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[1] *Legal and Constitution Affairs Committee Report, Copyright amendment (digital Agenda) Bill 1999,* Recommendation 9 at page 54.

[2] *An Expert Teacher's use of Textbooks in the Classroom,* Horsley, University of Sydney, Teaching Resources and Textbook Research Unit, 1991.

an article in a journal of two pages or less or of an entire work of two pages or less (e.g., poetry).

Further, in both countries, the copying must take place *on the premises of the educational institution*. This was intended to exclude large scale copying of purported "insubstantial portions" contracted to external printers or copyshops.

We therefore argue that if the Hong Kong government decides to create free insubstantial copying exceptions in favour of educational institutions, that exception should be drafted with extreme care, and its operation severely restricted. In most of the provisions referred to in chapter 2.8 of the Consultative Paper, the free copying exception is restricted to 1% of the work. The expansion of the free exception to 5% in Singapore is considered to be anomalous, and is one of the factors which have served to delay negotiations between the Singapore collective licensing society and the education sector.

In the case of Australia and Singapore, the free insubstantial copying rights are part of a broader statutory licensing scheme which permits the multiple photocopying of extracts ("reasonable portions") of copyright works on the institution agreeing to pay a levy or fee for the copying at an agreed rate, and agreeing to keep records of that copying.

For your information we have set out in table form a brief description and comparison of the free and remunerated copyright exceptions granted to the education sector by both the Australian and Singapore copyright laws.

Category of Copying	**Australia**	**Singapore**
Insubstantial portions – free	Up to two pages or 1% of the pages of a hardcopy work [or 1% of the words of an electronic work], within 14 days, where copied on the premises of an educational institute for a course offered by it.	Up to five pages or 5% of works greater than 600 pages, within 14 days, where copied on the premises of an educational institute for a course offered by it.
Reasonable portions – **recorded and paid for**	Up to 10% of the pages (or 10% of the words of an electronic work) or 1 chapter or 1 article in a journal (or more that one where they relate to the same subject), on agreement to record the copying and pay at an agreed rate or, failing agreement, as determined by the Copyright Tribunal.	Up to 10% of the pages or 1 chapter or 1 article in a journal (or more that one where they relate to the same subject), on agreement to record the copying and pay at an agreed rate or, failing agreement, as determined by the Copyright Tribunal
More than a reasonable portion or a whole work – **recorded and paid** as a reasonable portion	More than a reasonable portion where the person making the copy is satisfied after reasonable investigation, that a copy of that work is not available within a reasonable time at an ordinary commercial price.	More than a reasonable portion where the person making the copy is satisfied after reasonable investigation, that a copy of that work is not available within a reasonable time at an ordinary commercial price.

3 Reasonable Portions – Payment and Record-Keeping Systems

As shown on the table above, the portions which may be copied subject to payment and record-keeping obligations under both the Singapore and Australian legislation are up to 10% or 1 chapter of a work, 1 article in a journal or more than 1 article where they relate to the same subject-matter. A clear distinction is made between "insubstantial portions" which made be copied free of charge, and "reasonable portions" which must be paid for.

A statutory licence operating under this system provides certainty to educational institutions and their staff, and an effective and efficient means of remunerating rightsholders for the use of their works in this sector.

The Singapore legislation is almost identical to that which was introduced in Australia in 1980 and which established the framework for our first statutory licence system. That legislation was repealed in Australia and replaced with our current statutory licence system, which also now provides for:

- copying and transmission of digital works,
- the method of election to participate in the scheme by educational institutions (by issue of a Remuneration Notice to a declared collecting society),
- a detailed record-keeping system, which in practice encourages most educational users to agree to a simpler sampling system, and
- the criteria collecting societies must satisfy to be declared by the Australian government to be the organisation to which participating educational institutions are to pay remuneration for the licensed copying.

We would recommend the Australian legislation as a general model, subject to some minor modifications. Payment methods under international compulsory or statutory licence systems include government levies, payment of differential (according to primary, secondary or tertiary sector) rates per enrolled student, and per copy page rates based on sample surveys, surveys and library holdings and full record-keeping.

It should be noted that computer programs are not included in the Australian statutory licensing scheme.

The concern in the Hong Kong community over potential criminal liability for copying in the business sector may result in consideration of whether statutory licensing schemes can or have been extended to business and commercial copying. Some of the EU compulsory schemes effectively impose a levy on copying activities in the course of business operations. However, the practice has developed in common law countries that business copying is authorised through the development of voluntary licensing schemes, with the authorisation from rightsholders often being granted at the same time as they register to obtain distributions under the statutory schemes.

The current Hong Kong legislation makes some provision for the existence of voluntary licensing schemes, but without the impetus of a compulsory education licence, the acquisition of mandate or authority to license from copyright owners by a new collecting society is a slow process.

The primary task for any new collective licensing body is to acquire repertoire and licensing authority from a critical mass of local and international copyright owners. It

has been our experience that the creation of a compulsory statutory licensing scheme along the lines of the Australian model, hastens the process of repertoire acquisition, and, ultimately, the development of a viable local publishing industry.

Copyright and school Intranets

With respect to the use of copyright works on school Intranets (chapter 2.1 of the Consultative paper) and the need for electronic dissemination of information referred to in Chapter 1.10(c), we would draw to your attention the following:

(a) a statutory licence system can permit remunerated access to digital works by an educational institution, as is the case with the current Australian model; and
(b) recent international copyright law reform has distinguished between electronic copies made as part of the technical process of transmitting a digital work (which have been declared in some national laws not to constitute an infringement) and the making or transmission of other electronic copies, including those which are viewed by the end user, which are considered to be infringement of copyright unless authorised by the rights holder.

In the case of organisations covered by a remunerable statutory licensing scheme, the second class of electronic copying can be authorised by the scheme. Where an organisation is not of a class which can be covered by a statutory licence, it is desirable to encourage the development of voluntary licensing schemes. As noted above, the creation of a compulsory statutory licensing scheme can hasten the process of repertoire acquisition by a collecting society and allow it to offer effective voluntary licensing schemes to the business sector.

4 Provision of protection from civil and criminal liability for user

A successful statutory licensing scheme must protect the users from both criminal and civil liability for copyright infringement, where they are copying in accordance with the scheme. It should also provide protection from liability to the operator of any collective licensing scheme, again provided the copying is licensed in accordance with the scheme.

Under Hong Kong's present legislation, users of copyright material are protected ***only*** if the material is ***not*** licensed under an existing licensing scheme. No protection from prosecution is offered to the operators of those schemes, whether or not they are licensed.

Hong Kong's nascent collecting society, the Hong Kong Reproductive Rights Licensing Society (HKRRLS) is in the difficult position of negotiating licences with educational institutions (which require as broad a repertoire as possible) and trying to acquire local repertoire at the same time. Local copyright owners are reluctant to commit to a collective licensing organisation until they are confident of receiving an appropriate revenue stream to compensate for potential lost sales, HKRRLS cannot offer a revenue stream until it achieves a critical mass of licensing agreements and payments, and the users are reluctant to enter into licensing agreements until they are assured of a broad repertoire coverage.

Support of Rightsholders

Although participation in statutory licensing schemes is compulsory, copyright owners have increasingly accepted those schemes where copying of no more than reasonable portions is permitted, and only on payment of remuneration. The established schemes in other countries have demonstrated that they can provide an acceptable revenue stream, and that they ultimately assist in developing the local publishing industry.

We would emphasise that print and electronic copyright material are components of Hong Kong's developing knowledge economy, as well as computer programs and films. Indeed, we suggest that printed books, journals and electronic publications are just as much a component of the knowledge economy in any country as television dramas and merit the same high level of protection.

5 Legislative and administrative infrastructure for effective collection and distribution of remuneration.

The success of a statutory licensing scheme and a government endorsed scheme of collective administration of copying is to a large degree dependant on the structure and framework offered by the national copyright law. Strong copyright laws with an appropriate range of sanctions are essential to encourage compliance.

We note particular concern was expressed in Hong Kong earlier this year, that the unamended criminal provisions would allow innocent and occasional users to have a potential criminal liability for infringement.

We repeat the comments made in our submissions earlier this year, that it was a complete defence under the *Intellectual Property (Miscellaneous Amendments) Ordnance 2000* that a person did not know or had no reason to believe that they were dealing with infringing articles. This defence provided a strong protection to the "innocent" infringers and even to those who negligently infringe copyright, and was ignored in the lobbying campaign undertaken by copyright user groups earlier this year.

Nevertheless, it is desirable to have a range of sanctions including effective civil remedies such as statutory damages and, perhaps, a small claims jurisdiction for infringement disputes.

The Consultative paper raised specific question on sanctions in chapter 1.11, and our comments on those questions follow:

(a) Criminal or civil sanctions should apply to the possession of infringing copyright material, irrespective of whether the operations of the possessor are for profit or otherwise. However, implementation of the criminal sanctions can be undertaken so as to prosecute activities which are perceived by your administration as representing a real threat to the normal exploitation of copyright material.

(b) We cannot comment on personal liability of employees for infringing copies supplied by an employer.

(c) End-user criminal or civil liability should apply to all copyright material, irrespective of whether that material is *currently* the subject of extensive piracy. Exemption of specified classes of copyright material from piracy provisions may serve to encourage the development of a black market in that class of material in that country, a development which in the long term benefits only the black marketeers, not the government or the community.

(d) Infringing acts by an end user should attract potential criminal or civil liability , irrespective of whether that end user gained any commercial advantage from that infringing act. Again, discretion should be exercised in the enforcement of criminal sanctions, but civil action should be available e to any who consider that the potential for actual damage to their interest is sufficient to justify private litigation.

(e) Comment was sought as to whether the expression "for the purpose of or in the course of any trade or business" in the Ordnance will be sufficient to impose sanctions on infringement activities which conflict with the normal exploitation of a copyright work. We consider that it is essential for the Hong Kong government to deliver a message that copyright piracy will not be tolerated, and to discourage both the pirates and those who purchase their products.

Therefore it si desirable that the legislation make it clear that purchasing and possession of pirated products is an infringement of copyright and an offence (perhaps with a lesser penalty than that of production of pirated works). The practice of commercial acquisition of pirated works as a cost cutting measure should not be tolerated.

6 Role of the Copyright Tribunal

Chapter 7 of the Consultative paper invites comments on licensing bodies and systems of registration of those bodies.

It is accepted that collective administration provides an effective enforcement tool because it provides a cost-efficient and practical means of dealing with:

- licensing of large numbers of low value uses of copyright material,
- made by a potentially large pool of users in a wide geographic area within a particular country,
- in circumstances where the cost of transactional licensing would outweigh the benefit (that is, licence fees realised).

We recommend that only one collecting society should operate in a territory in respect of a particular class or classes of copyright work, thus providing a "one-stop shop" for copyright users. However, this structure may give rise to concerns as to the operation of what is an effective monopoly.

Different mechanisms have been established by various governments to supervise collecting societies and to resolve disputes as to level of remuneration and copying data collection processes. Broadly, these mechanisms may take three forms:-

(a) Regulation by Civil Courts. This model is used in many European countries where the activities of collecting societies are regulated in accordance with unfair competition law, or by officially provided mediation;

(b) Specialist Tribunals. This model is of adjudication by specialist tribunals or other arbitration bodies specifically established for the purpose, often called copyright tribunals or copyright boards. Many common law countries such as Australia and the United Kingdom have established Copyright Tribunals which are administrative bodies given the responsibility for dealing with disputes about collective licences;

(c) Administrative Authority**.** The official supervision or approval of the fees and terms of the collective licence is undertaken by an administrative authority. For example in Japan, all licensing tariffs set by JASRAC, the public performance organisation have to be submitted to the Commissioner to the Agency for Cultural Affairs. They cannot come into force until they have been approved.

Hong Kong has currently adopted the second of these models and the Consultative paper seeks comments as to the degree of regulation to be exercised over collecting societies, in particular whether provision should be made for mandatory registration of collecting societies.

Although CAL is not generally in favour of mandatory registration for licensing bodies, we suggest that a form of certification is essential if a compulsory statutory licence model is adopted. If the Australian model of payment of remuneration to one or more declared collecting societies is followed, it will also be essential to prescribe the criteria an organisation must satisfy for declaration.

Conclusion

Introduction of a statutory licensing scheme will encourage compliance and provide a business environment in which local copyright industries can be strengthened. We note that Hong Kong appears to be in a prime position to develop one of the largest educational publishing markets in the world, with a publishing industry capable of publishing in both English and in simplified and traditional Chinese characters.

A compulsory statutory licence scheme supported by strong copyright legislation will provide the legislative structure and will assist in developing the administrative and commercial structure essential for the further development of your local publishers.

With an appropriate balance of the interest of copyright users and rights holders, such a system will provide certainty to educational users, a revenue stream to copyright owners, and will allow Hong Kong to satisfy its international obligations. Please do not hesitate to contact us if you require further informationon the structure and operation of the model described.

Yours sincerely,

Michael Fraser
Chief Executive

FURTHER SUBMISSION FROM IFRRO ON THE INTELLECTUAL PROPERTY (MISCELLANEOUS AMENDMENTS) ORDINANCE 2000 AND THE COPYRIGHT (SUSPENSION OF AMENDMENTS) BILL 2001

1. IFRRO has already made two written submissions on this matter, on 1 May 2001 and 18 May 2001. We ask that the Committee take those submissions into consideration in its current deliberations.

IFRRO

2. IFRRO is an international non-government organisation with consultative status before the United Nations. It has 39 collecting society members in 34 countries, representing the interests of rightsholders in print and digital materials. IFRRO also represents 58 national and international author and publisher groups.

Intellectual Property (Miscellaneous Amendments) Ordinance 2000

3. Since 1996, the intellectual property statutes of countries around the world have been amended or replaced, to comply with the TRIPS agreement and the WIPO Copyright Treaty. As part of the review, many countries are paying specific attention to the effectiveness and scope of their enforcement mechanisms for intellectual property in particular, copyright.

4. In Hong Kong, significant and successful efforts have been made in redrafting the Copyright Ordinance and in taking practical measures to combat piracy in copyright products. The coming into force of the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 ("the Amendment Ordinance") has been an important milestone in the protection of intellectual property rights in Hong Kong.

5. The Amendment Ordinance has drawn encouraging and supportive comments from many countries. This is because of its recognition that a comprehensive and practical approach to enforcement of copyright can only be a joint undertaking by copyright owners and government.

6. Publishers and authors in Hong Kong also welcomed the Amendment Ordinance as it recognised that there was significant economic harm to copyright owners from infringement by photocopying and book piracy in areas other than businesses built on the sale of infringing products.

7. For example, copyshops in Hong Kong have structured their businesses so that they sell the service of making copies rather than selling the copies themselves. Consequently, although engaged in significant and otherwise infringing copying of copyright books, on technical grounds these copyshop proprietors were not guilty of a criminal offence. The Amendment Ordinance closed that loophole, and permitted effective action against such blatant infringers.

8. The issues addressed by the Amendment Ordinance are being reviewed in many other countries. For example in Australia the House of Representatives Standing Committee on Legal and Constitutional Affairs has recently delivered a report to government on the enforcement of copyright in Australia called *Cracking Down on Copycats* (www.aph.gov.au/house/committee/LACA/copyrightenforcement/contents.htm)

9. IFRRO's view is that the Amendment Ordinance is broadly consistent with the standards of intellectual property protection and criminal penalties imposed for copyright infringement in many other countries. We refer to the comparative analysis of the laws in other countries undertaken by Stephanie Faulkner on IFRRO's behalf, which addresses this point.

10. IFRRO acknowledges the concern in the Hong Kong business and education community as to the potential for criminal liability under the Amendment Ordinance.

11. However, IFRRO believes that concern is misconceived. In our experience only blatant infringers and pirates are prosecuted under comparable legislation in other countries.

12. Also as Hong Kong's Copyright Ordinance does not impose criminal or civil liability on uses of copyright material which do not "conflict with a normal exploitation of a work and do not unreasonably prejudice the legitimate interests of the right holder", there is additional protection for casual and innocent copyright infringers.

13. Moreover, IFRRO notes that it is a complete defence under Hong Kong's current legislation that a person did not know or had no reason to believe that they were dealing with infringing articles. This defence provides a strong protection to "innocent" infringers and those who negligently infringe copyright.

14. Further, if the Hong Kong government believes that the concerns of users are well founded authors and publishers would be pleased to work with the Hong Kong government to develop guidelines making it clear in which circumstances those authors and publishers would lodge criminal complaints.

15. Such an approach is preferable to effectively condoning infringement through the draft Copyright (Suspension of Amendments) Bill 2001.

Licensing Options – HKRRLS

16. The reaction to the Amendment Ordinance since it came into force on 1 April 2001 has been what can only be characterised as hysteria – a fear that even ad hoc photocopying means that the copier will be guilty of a criminal offence because there are no licensing options available to protect legitimate users of copyright material from criminal prosecution.

17. This is obviously not the case, as our comments above make clear. However, an easy means of avoiding criminal prosecution is through taking a license with HKRRLS.

18. IFRRO regrets the comments of government officials such as the apology by the Secretary for Commerce and Industry on 12 April 2001 which have led to the public forming the view that there is no effective licensing alternative for copyright users. IFRRO refers to the comments made by Viking Yam from HKRRLS at the Committee hearing on 22 May 2001 that since the news of the Suspension Bill was announced that licence enquiries have dropped dramatically.

19. HKRRLS is in its early stages of development, but already has concluded licences with schools, the government and a number of businesses. It would be disastrous if its future were to be affected by careless comments about the effectiveness of the licensing

systems, the intransigence of some users and the decision at this stage by newspaper publishers not to join with other copyright owners in blanket licensing through HKRRLS.

20. Unfortunately considerable damage has already been done to the standing of HKRRLS by the introduction of the Suspension Bill, and the accompanying publicity. If the Suspension Bill is passed, irrespective of the time limit now included in the draft, it will be very difficulty to re-establish credibility for any collective licensing organisation in the eyes of the copyright user groups.

21. If HKRRLS founders, then in 2002 when the Ordinance is re-introduced, there will be no collective licensing body covering the international and local repertoire of works contained in textbooks, periodicals, journals and international newspapers.

The Suspension Bill

22. IFRRO has a number of concerns about the proposed Copyright (Suspension of Amendments) Bill 2001 ("the Suspension Bill").

Encouragement of Pirates

23. The International Intellectual Property Alliance estimates that $US2 million is lost each year in Hong Kong as a result of piracy. Much of this piracy takes place in copyshops, which will copy whole books on request. The effect of the Suspension Bill is to indicate to those copyshops that structuring their businesses so that they do not directly sell the infringing copies is acceptable to the government.

24. IFRRO is concerned that the statement by a senior government representative describing the current Intellectual Property (Miscellaneous Amendments) Ordinance 2000 as a bad law gives implicit encouragement to the copyright piracy industry.

25. In IFRRO's view, the proposed Suspension Bill sends a message to other countries that the Hong Kong government's commitment to copyright enforcement is wavering.

Wide Scope of the Suspension Bill

26. IFRRO is also concerned that the scope and effect of the Suspension Bill will be wider than the purpose for which it is introduced. The Bill, rather than focusing on the specific areas of concern which prompted its introduction such as newspapers, applies to all printed books and journals and downloads from the Internet.

Value Judgements about Copyright Works

27. The Suspension Bill discriminates between different classes of copyright works, putting literary works into a "second class". This two-tier standard of protection is unique in intellectual property statutes around the world, and sends a clear message to users and owners about the Hong Kong government's priorities – that some copyright owners are more important than others.

28. The absurdity of this position is demonstrated in an example of a corporation, purchasing a set of licensed newsclippings, and then making multiple copies of them for staff to use in the course of their employment. Although infringing copyright in the newspapers the corporation would not be criminally liable for this activity.

29. Contrast this situation with a corporation purchasing one set of licensed software, and then making multiple copies of it for staff to use in the course of their employment. In this example, the corporation would be criminally liable for the activity.

30. If, however, the government decides to press ahead with the Suspension Bill, then IFRRO submits that the categories of copyright materials to which it applies be narrowed as much as possible, so that copyright pirates are not encouraged by the Hong Kong government.

31. IFRRO notes that the Suspension Bill discriminates in the area of broadcasts between current affairs and drama, lifting the effect of Amendment Ordinance in respect of current affairs but keeping it in place in respect of television drama, such as films. Why is a similar distinction not made in respect of literary works, leaving the Amendment Ordinance in place for books and journals but lifting it in respect of news and current affairs?

IFRRO's Submission

32. IFRRO submits that the Amendment Ordinance should not be suspended at all. There are other mechanisms for achieving the desired results, such as copyright owners cooperating with the government by offering a grace period or by the government developing sentencing guidelines.

33. IFRRO submits that if the Suspension Bill is enacted it should be redrafted so that it applies only to areas of concern, such as newspapers. IFRRO submits that the Amendment Ordinance should not be suspended for books and journals as licensing mechanisms for legitimate users exist.

34. IFRRO also submits that the period for which the Suspension Bill is in force must be certain. In IFRRO's view significant gains have been made in the last few weeks as copyright owners and users struggle to come to terms with the changes to the Copyright Ordinance in Hong Kong. In IFRRO's view, this momentum would be lost if there were a discretion for the effect of the Suspension Bill to be extended for further periods of time.

35. IFRRO looks forward to working with the Hong Kong government in the future development of copyright law in Hong Kong.

36. If you require any further information from IFRRO, we would be happy to provide it to you.

29 May 2001