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Paper for the House Committee meeting on 5 March 2004

**Report of the Bills Committee on Copyright (Amendment) Bill 2001
and Copyright (Amendment) Bill 2003**

Purpose

This paper reports on the deliberations of the Bills Committee on the Copyright (Amendment) Bill 2003 (the 2003 Bill).

Background

2. In April 2001, amendments to the Copyright Ordinance (Cap. 528) ("CO") were implemented to introduce, inter alia, criminal liability for the use of infringing copies of copyright works in business. While the principal objective of the amendments was to combat rampant piracy in computer software and audio-visual products, the new criminal provisions also applied to photocopying of printed works including newspapers and downloading of information from the Internet. The public in general considered that the scope of the new criminal provisions was too wide and might hamper the dissemination of information in enterprises and teaching/educational activities in schools. In June 2001, the Copyright (Suspension of Amendments) Ordinance 2001 (the Suspension Ordinance) was enacted to suspend the new criminal provisions except as they applied to computer programs, movies, television dramas and musical recordings (the Four Categories of Works). The phrase "in connection with" in the expression "for the purpose of, in the course of, or in connection with, any trade or business" was removed from the application of the criminal provisions wherever it appears in the CO, so that activities incidental to or marginally related to business would be outside the scope of criminal liability for using infringing copies of copyright works in business. The Administration undertook to consult the community and formulate a long-term solution while the Suspension Ordinance was still in force.

3. In November 2001, the Administration issued a consultation paper entitled "Review of Certain Provisions of the Copyright Ordinance". Having regard to the outcome of public consultation and Members' views, the

Administration decided in March 2002 to introduce the necessary legislative proposals to make permanent the suspension arrangements under the Suspension Ordinance.

4. The Copyright (Amendment) Bill 2001 (the 2001 Bill), which sought to remove civil and criminal liabilities pertaining to the parallel importation of and subsequent dealings in articles which have embodied in them a computer program, was introduced into the Legislative Council on 19 December 2001. The 2001 Bill was enacted on 2 July 2003 as the Copyright (Amendment) Ordinance 2003 and came into operation on 28 November 2003.

The 2003 Bill

5. Introduced into the Council on 12 February 2003, the 2003 Bill seeks to implement the following recommendations arising from the public consultation on certain provisions of the CO conducted in late 2001:

- (a) The arrangements under the Suspension Ordinance whereby criminal liability for the use of infringing copies of copyright works in business is confined to the Four Categories of Works should be made permanent.
- (b) The phrase "in connection with" should be removed from the expression "for the purpose of, in the course of, or in connection with, any trade or business" where it appears in the Ordinance.
- (c) A new defence against criminal liability should be provided for employees possessing infringing copies of works belonging to the Four Categories of Works supplied by their employers, and that this defence should take retrospective effect from 1 April 2001.
- (d) The existing restrictions on parallel importation of copyright works (other than computer software) should be maintained, except that the criminal and civil liability for importation and possession of such goods by end-users should be removed.
- (e) To combat the illicit reproduction of books by copy-shops for commercial purposes more effectively, the relevant criminal sanctions in the Ordinance should be tightened.

The Bills Committee

6. The House Committee agreed on 14 February 2003 that the same Bills Committee should study both the 2001 and 2003 Bills. The membership of the then Bills Committee on the 2001 Bill was re-opened and the name of the Bills Committee revised to include the 2003 Bill under its scope of scrutiny. The membership list of the Bills Committee is in **Appendix I**. Under the chairmanship of Hon SIN Chung-kai, the Bills Committee has held a total of six meetings to study the 2003 Bill. A list of organizations and individuals which have submitted views on the 2003 Bill to the Committee is in **Appendix II**.

Deliberations of the Bills Committee

7. The Bills Committee has examined carefully the arguments for and against some of the major proposals in the 2003 Bill relating to end-user criminal liability and notes that views among various stakeholders are highly divided. On the way forward for the 2003 Bill, members in general support the Administration's proposal under which all those provisions involving end-user criminal liability will be deleted with a view to enacting only those provisions in the Bill which are related to criminal sanctions against illicit copy-shops. In effect, this means that only the proposal in paragraph 5(e) will be dealt with in the 2003 Bill while the remaining proposals in paragraphs 5(a) to (d) will be pursued at a later stage. Members also agree with the Administration's proposal to extend the effective period of the Suspension Ordinance to 31 July 2006 for further consultation with the stakeholders on issues related to the proposed scope of end-user criminal liability.

Proposed copy-shop offence to be dealt with under the 2003 Bill

Tightening criminal sanction against illicit copy-shops

8. One of the objectives of the 2003 Bill is to tighten control over the illicit reproduction of books by copy-shops for profit or financial reward. Pursuant to proposed section 118C(2), a person engaged in a commercial copying service will commit an offence if he possesses two or more substantially identical infringing copies of a copyright work as published in a book, magazine or periodical. The proposed maximum penalty for this offence is the same as that for other offences of dealing in infringing copies of copyright works under the CO, namely imprisonment of four years and a fine of \$50,000 per infringing copy. The following defences are available to the defendant under proposed section 118C(3), (4) and (5) of the 2003 Bill:

- (a) The person does not know and has no reason to believe that the copies in question are infringing copies.

- (b) The person possesses the infringing copies of certain extracts from books, magazines or periodicals only by virtue of his possession of copies of the principal work which contains such extracts and where such extracts constitute not more than 20% of the contents of the principal work concerned.
- (c) The relevant book, magazine or periodical is available free of charge to members of the public.

9. Members note that the Consumer Council, the publishing industry and some chambers of commerce support in principle more stringent enforcement against illicit copying services. Many publisher associations have further suggested that the scope of proposed section 118C should not be confined to books, magazines and periodicals, but should also cover copyright works published in any literary, artistic, or dramatic works or printed musical works. In this regard, the Administration has submitted to the Bills Committee that the infringing act in question can already be dealt with under proposed section 118(1)(a) which makes it an offence for any person to make infringing copies of any kind of copyright work for profit or financial reward. Given that books, magazines and periodicals represent the majority of copyright works being illicitly reproduced by copy-shops, the Administration considers the scope of proposed section 118C appropriate.

10. The Bills Committee has examined the concerns raised by the publishing industry about possible abuse of the defences, especially proposed section 118C(4) relating to the possession of infringing copies by virtue of possession of the principal work containing such copies and the 20% threshold. The publishing industry has pointed out that a copy-shop may exploit the defence under proposed section 118C(4) by, for example, copying an entire book of 100 pages that appear in a compendium totalling 550 pages. Some publisher associations have put up other proposals such as lowering the 20% threshold to 10%.

11. Whilst agreeing in principle that criminal sanctions should be stepped up against illicit copy-shops, members are concerned whether the proposed provisions as currently drafted in the 2003 Bill are sufficiently clear and effective in achieving the Administration's policy objective. As the possession of two or more infringing copies of a copyright work may constitute an offence under proposed section 118C(2), some members have questioned whether this will give rise to the wrong impression that it is lawful to make just one copy, contrary to the Administration's proposal that the making of one infringing copy for profit or financial reward is an offence under proposed section 118(1)(a) of the same Bill. What constitutes a "substantially identical" reprographic copy under proposed section 118C(2) and the use of a percentage threshold may also be subject to arbitrary interpretation. Members are concerned about a copy-shop's liability in situations such as infringing copies

being found in the shop but which have in fact been left behind by customers.

12. Considering that for educational or research purposes, there may be a need to reproduce certain copyright work which is out of print or no longer available for sale, some members and deputations from the academia are gravely concerned about the criminal liability, if any, which may arise from making photocopies of such types of work under proposed section 118C.

13. In this regard, the Administration has referred to existing section 38 of the CO which stipulates, inter alia, that it is a permitted act to deal fairly with (which includes the act of copying) a copyright work for research and private study, having regard to the purpose and nature of the dealing, the nature of the work, and the amount and substantiality of the portion dealt with in relation to the work as a whole. The copying of a copyright work may be a permitted act, subject to the aforesaid considerations and the primary consideration under section 37(3) of CO, i.e. that the act does not conflict with a normal exploitation of the work by the copyright owner and does not unreasonably prejudice the legitimate interests of the copyright owner. However, where such copying has not been authorized by the copyright owner and does not fall within the scope of permitted act under section 38 of CO, it remains an offence for the shop to make the copy for sale or profit under proposed section 118(1)(a) of the 2003 Bill.

The Administration's revised proposal

14. In response to members' concerns and after further consultation with copying service operators and the publishing industry, the Administration has proposed to amend proposed section 118C(2) to provide that a person commits an offence if, for the purpose of or in the course of a copying service business, he possesses an infringing copy of a copyright work as published in a book, magazine or periodical. In other words, the mere possession of one infringing copy of a copyright work will give rise to criminal liability. The prosecution will not be required to prove any element relating to the making of the infringing copy. The Administration has also proposed to revise the defence provisions in order to avoid catching situations which are not related to the copying service business per se. For example, under the revised proposal, if the infringing copy has been left behind by a customer, the copy-shop may invoke the defence that the infringing copy was not made for the purpose of and in the course of the copying service business. An employee of the copy-shop who possesses an infringing copy of a book for his own reference may avail himself of the defence that the infringing copy was not made for profit and reward. The originally proposed defence relating to lack of knowledge is retained. For the avoidance of doubt, the Administration will add a definition of "reward" to mean reward other than reward of a nominal value.

15. With a view to ascertaining the intended scope of the offence under proposed section 118C(2), the Bills Committee has enquired on a copy-shop's

liability in a common scenario such as being requested by a student to copy a work which contains the copy of a photo published in a magazine, the photo in question being regarded as a reprographic copy of a copyright work. In clarification, the Administration has highlighted that this would depend on whether the reprographic copy in the possession of the copy-shop is an "infringing copy" as defined under existing section 35 of CO. If the act of reproducing the copy by the student falls within the scope of permitted acts as provided under existing section 38 of CO, then, the reprographic copy in question will not amount to an "infringing copy" and the copy-shop will not be criminally liable under proposed section 118C(2).

16. As regards consultation with copy-shops on its revised proposal, the Administration has informed the Bills Committee that the copy-shops which have been consulted are aware of the criminal liability involved for the provision of copying service. While in general, the copy-shops consulted have not commented specifically on the proposed new offence, the Administration has reported that many of them have requested further discussion with the Hong Kong Reprographic Rights Licensing Society on the licensing arrangements. In the course of their meetings with the Administration, some copy-shops have stated their view that customers who place the photocopying order should be held criminally liable, and that criminal liability should only be imposed when there is knowledge on the part of both the copy-shop and the customer that the copy in question is an infringing copy.

17. In this regard, the Administration has reiterated its policy intent of targeting the supply side of infringing copies and imposing liability on end-users in business context for certain categories of works only. It has also pointed out that under both the existing CO and the proposed new offence, a person charged would have a defence if he can prove that he did not know and had no reason to believe that the copy in question is an infringing copy.

18. Members in general have not raised objection to the Administration's revised proposal on proposed section 118C. However, since the mere possession of an infringing copy by a copy-shop may constitute an offence, members have urged the Administration to ensure that the defences are adequate and where necessary, a person should have no difficulty in invoking the defences. Regarding members' concern that the affected parties should be well-informed of the new provisions, if enacted, the Administration has advised that it is preparing some more frequently asked questions relating to the photocopying service and will put them on the web page of the Intellectual Property Department in due course.

Copying service business

19. In examining the scope of copying service business as defined under proposed section 118C(1), members have enquired whether fee-charging copying service provided at premises such as in a university or a government

department will be covered under the proposed definition. They have also sought clarification on whether the copying service business as contemplated under proposed section 118C refers to a discrete business entity whose principal activity is the provision of copying service (e.g. a copy-shop) or part of a larger business entity (e.g. a copying service offered as part of a bookstore business).

20. In response, the Administration confirms that the scope of proposed section 118C(1) includes all copying service business conducted for profit, irrespective of their location. It further confirms that the proposed section is intended to cover a copying service which is a discrete business entity, or one which is part of a larger business entity. In the former scenario, the copying service itself must be conducted for profit. In the latter scenario, the larger business entity must be one which is conducted for profit although the copying service itself may not be so. The Administration will introduce a Committee Stage Amendment (CSA) to proposed section 118C(1) to clarify the intended scope of copying service business more clearly.

21. On whether liability should be extended to cover copying service activities of a non-commercial nature as suggested by some publishers, the Administration has advised that its policy intent is to tighten up criminal sanction against illicit photocopying services for profit. Since the mere possession of an infringing copy of a copyright work may give rise to an offence, it is necessary to delineate the scope of proposed section 118C(1) to make sure that the criminal net will not be cast too wide. As most illicit photocopying services are operated on a commercial scale, the Administration considers that the current proposal targeting illicit copy-shops can achieve its policy objective.

Some other major proposals requiring further examination

Offences in relation to infringing copies of particular categories of works

22. Proposed section 118A is one of the most controversial proposals in the 2003 Bill. It seeks to make permanent the arrangements under the Suspension Ordinance whereby criminal liability for the use of infringing copies of copyright works in business is confined to the Four Categories of Works. Over 50 organizations including trade associations, professional bodies, educational institutions, the publication industry and copyright owners have submitted views on the proposed scope of criminal liability for end-users under proposed section 118A. Stakeholders who are primarily copyright works users such as the educational sector, professional bodies and a number of local trade associations support the current proposal; while the publication industry, newspaper industry, some foreign chambers of commerce and copyright owner groups object to the Administration's proposal.

23. Some local trade organizations in support of the proposal have submitted to the Bills Committee that proposed section 118A will accord copyright protection to computer software and audio-visual works in a more specific and well-defined manner. The Hong Kong Small and Medium Enterprises Association Ltd. has considered that criminal sanctions should not be introduced at all but consideration may be given to streamlining the civil litigation procedures if necessary. In its submission to the Bills Committee, the Inter-Institutional Task Force on Reprographic Rights Licensing, Heads of Universities Committee has pointed out that the permanent suspension arrangement will provide certain assurance to teachers and relieve them of the criminal liability arising from their possession and use of copyright materials in a printed form for educational purposes. Without proposed section 118A, teaching activities will be inhibited and learning or the free dissemination of knowledge will be hampered.

24. The Bills Committee has also considered the strong objection from the publication industry against making the suspension arrangements permanent. It holds the view that books, periodicals and other printed works should be given the same level of copyright protection as the Four categories of Works and that criminal liability should also be imposed on the use of pirated copies of printed copyright works. The industry considers that the proposal in the 2003 Bill to make permanent the suspension arrangements will send a wrong message to the public and encourage rampant piracy activities. Their concerns are shared by the American Chamber of Commerce and the Australian Chamber of Commerce in Hong Kong which disagree that certain types of copyright works should attract higher protection in the form of criminal sanction than other types of works. The two local free television broadcasters and the Commercial Radio have suggested that proposed section 118A should also cover non-dramatic television and radio broadcasts.

25. In this connection, the Hong Kong Bar Association has submitted that the basis for attracting criminal liability under proposed section 118A(1) should be "use" instead of "possession". It has considered that legal practitioners and other professionals should not be held liable for possessing infringing copies provided by their clients for the purpose of or in the course of their practice. The Administration has agreed to undertake further consultation with copyright owners and users to work out a satisfactory solution.

26. On the propriety or otherwise of proposed section 118A, the publisher associations, newspaper industry and copyright owner groups have considered the Administration's proposal inconsistent with Article 61 of the Agreement on Trade-related Aspects of Intellectual Property Rights (the TRIPS Agreement) which stipulates, inter alia, that "members shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale". As Article 10(1) of the TRIPS Agreement requires computer programs to be protected as literary works, query

has been raised as to why only computer programs, but not other types of literary works, should be singled out for protection under proposed section 118A.

27. On Hong Kong's international obligation under the TRIPS Agreement, the Administration considers that Article 61 of the Agreement only spells out a general requirement and does not prescribe a standard practice to deal with criminal liability. Members note that the Administration holds a different view from the deputations as it maintains that the possession of an infringing copy of a copyright work for use in business is not copyright piracy on a commercial scale and is not therefore covered by Article 61 of the TRIPS Agreement. The Administration has also contended that Article 10(1) does not require the same copyright protection be accorded to computer programs and other forms of literary works.

28. The Hong Kong Copyright Licensing Association and the Newspaper Society of Hong Kong have specifically referred the Administration to section 506 of the Copyright Act in the United States (US). In this regard, the Administration has advised that the US legislation targets the person who has committed the infringing act (e.g. reproduction of a copyright work) rather than the end-user. Moreover, the scope of "fair use" provisions, which seek to exempt certain acts from the scope of "infringing act", under the US legislation is potentially much wider than that of the "fair dealing" provisions under the laws in Hong Kong, United Kingdom and Australia.

29. In explaining its position to the Bills Committee, the Administration has maintained that its current proposal has struck the right balance between the interests of copyright work owners and users and that any change to the existing scope of criminal liability as proposed in the 2003 Bill may not be appropriate at this stage. In the light of the divided views received, members consider that the proposed provisions must be studied with great care before taking a decision.

30. The Bills Committee has also noted that the Administration has proposed a new defence for an employee charged with an offence under proposed section 118A(1) where the possession of an infringing copy of the Four Categories of Works occurred in the course of his employment and the infringing copy was provided to him by or on behalf of his employer. The proposed defence however will not be available to employees of a business establishment who have functions of management of the establishment.

31. Members are aware that the proposed defence was drawn up in response to the outcome of the public consultation exercise in late 2001. The public was concerned that criminal sanction might be too harsh for employees as they might not be able to reject the use of pirated products for fear of losing their jobs. Nevertheless, members have also noted that in their submissions, some chambers of commerce have expressed concern about possible abuse of

the proposed defence. Sharing the latter's concern, the Business Software Alliance has specifically suggested that instead of providing for an express defence, the Administration should consider introducing a "whistle-blower" protection for employees to the effect that an employee who complains about or rejects the use of infringing copies provided by his employer in the course of employment will not be terminated or discriminated against by the employer.

Proposed removal of criminal and civil liabilities of non-commercial dealings in relation to parallel imports

32. "Parallel-importing", in the context of a copy of a copyright work, refers to the importing of a copy of a work which was lawfully made outside Hong Kong without the explicit authorization of the copyright owner. One of the controversial proposals in the 2003 Bill is the removal of civil and criminal liabilities in relation to parallel importing of copies of copyright works and possession of such parallel-imported copies, unless the importing or possession is for the purpose of selling, letting for hire, or distributing for profit or financial reward or to such an extent as would prejudicially affect the copyright owner.

33. The effect of this proposal is that a person will not incur any civil or criminal liability for parallel importing copies of copyright works, or for possessing such copies, for use in the person's business if no commercial dealing was undertaken. The proposal will also remove civil and criminal liabilities for exhibiting in public parallel-imported copies other than for the sale or hire of those copies, and for distributing such copies other than for profit or financial reward or to such an extent as to affect prejudicially the copyright owner.

34. The Bills Committee notes that the Consumer Council, some local trade associations, professional bodies, the educational sector and libraries support the proposal. The Hong Kong Library Association and the Academy of Performing Art welcome the proposed liberalization as it will facilitate educational institutions to purchase copyright materials from overseas faster and at more competitive prices for educational purposes.

35. Publishers, on the other hand, object to the proposal and caution about the negative impact on the business and employment of the local authorized distributors and the local publishing industry. The International Federation of the Phonographic Industry (Hong Kong Group) Limited has pointed out that the proposed liberalization would adversely affect the income of the music industry because Karaoke may parallel-import musical products direct from overseas instead of buying new songs from the industry. The Motion Picture Industry Association shares a similar view that the film industry will be jeopardized as business establishments such as coffee shops and restaurants may parallel-import the VCD or DVD version of a movie for playing in the course of their business while the movie is still on show at local theatres. The

Administration, in response, has explained that if a person plays a film or sound recording (parallel-imported or otherwise) in public without the authorization of the copyright owner, he may be civilly liable under existing section 27 of CO which provides that the playing or showing of a work in public is an act restricted by the copyright in a sound recording, film, broadcast or cable programme. The music and film industry however consider the remedy under existing section 27 inadequate and urge that criminal and civil liability be maintained.

36. Members reckon that liberalizing parallel importation is a sensitive area and requires a fine balancing between the interests of copyright owners and users. While the Administration has advised that its proposal is in line with the free market principle of encouraging the free flow of genuine goods, it has agreed to study the concerns raised by the industries instead of proceeding with its proposal on this occasion.

Details of the way forward

37. On the fundamental issue of whether criminal liability for the use of infringing copies of copyright works in business should be confined to the Four Categories of Works as proposed under the 2003 Bill, the Bills Committee has urged the Administration to maintain discussion with the stakeholders to see if some consensus can be reached, in order that the legislative proposals, if enacted, will be generally acceptable to the community at large.

38. In reporting the latest progress of consultation with stakeholders, the Administration has informed the Bills Committee that after a series of meetings arranged between copyright owner groups (mainly the newspaper industry and the publishing industry) and users (mainly the educational sector and some trade associations), both sides have agreed that the possibility of expanding the scope of end-user liability in business to cover printed works can be explored provided that the following three conditions are met to serve as the basis for further discussion :

- (a) fair use provisions, similar to those found in the Copyright Act of the United States, should be included so as to safeguard against catching innocent end-users;
- (b) in addition to legal provisions on fair use, detailed guidelines on fair use in certain circumstances should be laid down; and
- (c) the scope of the proposed criminal end-user offence in respect of printed works should be well-defined in CO so that, for example, only willful copying that causes substantial loss to the copyright owner will be caught. The exact scope and wording can be considered in due course.

39. The Administration has reported to the Bills Committee that some local chambers of commerce, the educational sector and public relations practitioners maintain reservation on expanding the scope of criminal liability to cover printed works without the introduction of safeguards such as the establishment of an effective licensing scheme under government monitoring to authorize the use of copyright works and the introduction of an appeal mechanism to handle appeals against unfair licensing. The Administration has advised that the issues identified for further study, including the open-ended approach of exempting copyright infringement under the US model, are unlikely to be resolved in the near future. As such, it has proposed two options for taking the 2003 Bill forward :

- (a) The Bills Committee will continue to process the 2003 Bill in its present form with a view to enacting the Bill within this legislative session. In parallel, the Administration will continue to discuss with copyright work owners and users to explore the possibility of extending the scope of end-user criminal liability to cover other types of copyright works such as printed works; or
- (b) The Administration will move the necessary CSAs to delete those provisions in the 2003 Bill relating to criminal liability for end-users with a view to enacting within this legislative session only those provisions related to illicit reprographic service by copy-shops. Pending the outcome of further consultation with the stakeholders, the Administration proposes to move a resolution to extend the effective period of the Suspension Ordinance for 24 months (up to 31 July 2006) during which end-user criminal liability as provided under the existing CO as read together with the Suspension Ordinance will remain in force. The Administration would aim to complete discussion with copyright owners and users and introduce a fresh bill to the Legislative Council for enactment within this period.

40. There is general support from members for the option in paragraph 39(b) above. Members also agree with the Administration's proposal to resume the Second Reading debate on the Bill and to move a resolution to extend the effective period of the Suspension Ordinance at the same Council meeting. The Administration has advised that the bill, if enacted, will come into operation on 1 September 2004.

Committee Stage Amendments

41. The full set of CSAs to be moved by the Administration is at **Appendix III**. The CSAs seek to delete all provisions relating to end-user

liability in the 2003 Bill, to retain and amend the proposed provisions relating to the copy-shop offence and to introduce some technical amendments to the CO. The Bills Committee will not move any CSAs in its name.

Recommendation

42. The Administration has indicated that it intends to resume Second Reading debate on the 2003 Bill on 24 March 2004 and to move a resolution to extend the effective period of the Suspension Ordinance for 24 months at the same Council meeting. The Bills Committee has no objection to the Administration's proposal.

Advice sought

43. Members are invited to note the recommendation of the Bills Committee in paragraph 42 above.

Council Business Division 1
Legislative Council Secretariat
4 March 2004

**Bills Committee on Copyright (Amendment) Bill 2001
and Copyright (Amendment) Bill 2003**

Membership list

Chairman	Hon SIN Chung-kai
Members	Hon Kenneth TING Woo-shou, JP Hon Cyd HO Sau-lan (up to 26.1.2004) Hon Margaret NG Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP Hon HUI Cheung-ching, JP Hon CHAN Kam-lam, JP Dr Hon YEUNG Sum Hon YEUNG Yiu-chung, BBS Hon Timothy FOK Tsun-ting, SBS, JP Dr Hon LAW Chi-kwong, JP Hon Audrey EU Yuet-mee, SC, JP Hon MA Fung-kwok, JP
Clerk	Miss Polly YEUNG
Legal Adviser	Miss Anita HO
Date	27 January 2004

**Bills Committee on Copyright (Amendment) Bill 2001
and Copyright (Amendment) Bill 2003**

**Organizations/individuals which/who have submitted views on the
Copyright (Amendment) Bill 2003 to the Bills Committee**

Organizations

Copyright owners associations

1. The Anglo-Chinese Textbook Publishers Organization
2. Business Software Alliance
3. Educational Booksellers' Association Ltd
4. Hong Kong and International Publishers' Alliance
5. Hong Kong Copyright Licensing Association Ltd
6. Hong Kong Educational Publishers Association
7. Hong Kong Publishing Federation Ltd
8. Hong Kong Reprographic Rights Licensing Society
9. International Federation of the Phonographic Industry (Hong Kong Group) Ltd
10. McGraw-Hill International Enterprise, Inc.
11. Motion Picture Association
12. Movie Producers and Distributors Association of Hong Kong Ltd
13. Hong Kong, Kowloon & New Territories Motion Picture Industry Association Ltd
14. Pearson Education (parent company of Longman Hong Kong Education)
15. Association of American Publishers, Inc.
16. Canotta Publishing Co Ltd
17. Chung Tai Educational Press
18. The Commercial Press (HK) Ltd
19. Hon Wing Book Co Ltd
20. Hong Kong Educational Publishing Co
21. Hong Kong Music Publisher
22. International Publishers Association
23. Modern Education Network Ltd
24. Oxford University Press (China) Ltd
25. Pilot Publishers Services Ltd
26. Pilot Publishing Co Ltd
27. The Publishers Association
28. SNP Panpac (HK) Ltd.
29. Witman Publishing Co (HK) Ltd
30. Ying Lee Music Co Ltd
31. Hong Kong Video Development Foundation Ltd

Educational bodies

32. HUCOM Inter-Institutional Task Force on Reprographic Rights Licensing
33. The Joint University Librarians Advisory Committee
34. The Hong Kong Academy For Performing Arts

Newspapers and related organizations

35. Hong Kong News Clipping Industry Working Committee
36. The Newspaper Society of Hong Kong

Television and radio broadcasters

37. Asia Television Ltd
38. Hong Kong Commercial Broadcasting Co Ltd
39. Television Broadcasts Ltd

Trade associations

40. The Australian Chamber of Commerce in Hong Kong
41. The Chinese General Chamber of Commerce
42. The Chinese Manufacturers' Association of Hong Kong
43. Hong Kong General Chamber of Commerce
44. Federation of Hong Kong Industries
45. The American Chamber of Commerce in Hong Kong
46. Hong Kong Small and Medium Enterprises Association Ltd
47. Hong Kong Chamber of Small and Medium Business Ltd
48. The Hong Kong Association of Banks
49. The Chiu Chau Plastic Manufacturers Association Co Ltd

Professional bodies and law firms

50. The Law Society of Hong Kong
51. Hong Kong Bar Association
52. The Hong Kong Institute of Architects
53. Hong Kong Society of Accountants
54. The Hong Kong Institute of Trade Mark Practitioners
55. Hong Kong Group Asian Patent Attorneys Association
56. Lovells (Hong Kong)

Other organizations

57. Consumer Council
58. Hong Kong Library Association
59. Vocational Training Council
60. Hong Kong Blind Union
61. Hong Kong Public Relations Professionals' Association Ltd

- 62. Hong Kong Institute of Professional Photographers
- 63. EastWest Productions
- 64. Hong Kong Christian Council

Individuals

- 65. Mr Lawrence LOUR
- 66. Mr Henry J H WHEARE
- 67. Mr Peter A CRUSH

COPYRIGHT (AMENDMENT) BILL 2003

COMMITTEE STAGEAmendments to be moved by the Secretary for Commerce,
Industry and Technology

<u>Clause</u>	<u>Amendment Proposed</u>
Long title	By deleting "and to repeal the Copyright (Suspension of Amendments) Ordinance 2001".
1	By deleting subclause (2) and substituting – <p style="text-align: center;">"(2) This Ordinance shall come into operation on 1 September 2004."</p>
2	By deleting the clause.
3	By deleting the clause.
New	By adding – <p style="text-align: center;">"3A. Penalties for offences under section 118</p> <p style="text-align: center;">Section 119(1) is amended, in the Chinese text, by repealing everything after "定罪 , " and substituting "可處監 禁4年 , 並可就每份侵犯版權複製品處第5級罰款。".</p>
4	By deleting the clause and substituting – <p style="text-align: center;">"4. Section added</p> <p style="text-align: center;">The following is added –</p>

"119A. Offence in relation to possession of infringing copies in a copying service business

(1) In this section –

"copying service business" () means a business, conducted for profit, that includes the offering of reprographic copying services to the public and, in the case of a business that includes the offering of reprographic copying services to the public at more than one place, means any part of the business carried on at such a place;

"reward" () means reward other than reward of a nominal value.

(2) A person commits an offence if, for the purpose of or in the course of a copying service business, he possesses a reprographic copy of a copyright work as published in a book, magazine or periodical, being a copy that is an infringing copy of the copyright work.

(3) In proceedings for an offence under subsection (2), it is a defence for the person charged to prove that the infringing copy of a copyright work in question was not made for the purpose of and was not made in the course of the copying service business.

(4) In proceedings for an offence under subsection (2), it is a defence for the person charged to prove that the infringing copy of a copyright work in question was not made for profit and was not made for reward.

(5) In proceedings for an offence under subsection (2), it is a defence for the person charged to prove that he did not know and had no reason to believe that the copy of a copyright work in question was an infringing copy of the copyright work.

(6) A person who commits an offence under subsection (2) is liable on conviction on indictment to a fine at level 5 in respect of each infringing copy and to imprisonment for 4 years.

(7) Sections 115, 116 and 117 (presumptions as to various matters connected with copyright) do not apply to proceedings for an offence under subsection (2).".".

5 By deleting the clause.

6 By deleting the clause.

7 By deleting the clause.

New By adding –

"7A. Seized articles, etc. liable to forfeiture

Section 131 is amended –

- (a) in subsection (1), by adding ",
119A" after "118";
- (b) in subsection (7), by adding ",
119A" after "118".

7B. Disposal of articles, etc. where a person is charged

Section 132 is amended by adding ", 119A" after "118".

7C. Determination of application for forfeiture

Section 133 is amended –

- (a) in subsection (5), by adding ", 119A" after "118";
- (b) in subsection (6), by adding ", 119A" after "118".

8 By deleting the clause.

9 By deleting the clause.

10 By deleting the clause.

11 By deleting the clause.

12 By deleting the clause.

13 By deleting the clause.

New By adding –

"Consequential Amendments

Prevention of Copyright Piracy Ordinance

14. Seized optical discs, etc., liable to forfeiture

Section 34(3)(a) of the Prevention of Copyright Piracy Ordinance (Cap. 544) is amended by adding ", 119A" after "118".

Schedules 1 and 2 By deleting the Schedules.