



香港工業總會
FHKI

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Federation of Hong Kong Industries

香港九龍尖沙咀 漢口道5-15號

漢口中心4樓

4/F, Hankow Centre, 5-15 Hankow Road

Tsimshatsui, Kowloon, Hong Kong

電話 Tel +852 2732 3183 傳真 Fax +852 2721 3434

電郵 Email fhki@fhki.org.hk

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3 May 2006

The Honourable Sin Chung-kai, JP
Chairman
Bills Committee on Copyright (Amendment) Bill 2006
Legislative Council
8 Jackson Road
Hong Kong

Dear Mr Sin,

Copyright (Amendment) Bill 2006

The Federation of Hong Kong Industries would like to submit the following views on the Copyright (Amendment) Bill 2006.

Preamble

As a matter of principle, FHKI fully respects the legitimate rights of intellectual property owners. We are also in keen support of the Government's efforts to continue improving the legislative regime to strengthen the protection of intellectual property rights, as this is important in fostering Hong Kong's development into a high value-added and knowledge-based economy.

In our view, a good copyright legislation needs to strike a sensible balance between protecting the interests of copyright owners and facilitating the fair use of copyright works by the public. While we agree that the law should give the enforcement authorities the necessary "teeth" to tackle piracy and counterfeiting activities, extreme care must be exercised to avoid overly restricting the information flow in society and organisations.

It is our belief that criminal sanctions, being a form of punishment for serious misdeeds, must not be lightly imposed on cases involving only minor infringements not entailing substantial economic loss to the copyright owners. For such cases, civil remedies are already available, which should be sufficient for copyright owners to seek legal redress.

Specific Comments

Below are our comments on the specific provisions in the Bill.

1. Scope of business end-user possession criminal liability

The FHKI supports maintaining the existing scope of business end-user possession criminal liability to cover only four categories of copyright works, namely: computer programmes, movies, television dramas and musical recordings.

2. New criminal liability for copying/distribution of copyright infringing printed works

We are against introducing a new criminal offence for making or distribution of copyright infringing printed works, despite the inclusion of a “safe harbour” provision in the Bill.

In today’s businesses, photocopying of newspaper/magazine articles or passages of a publication for internal circulation, discussion or reference is a very common practice. This is done purely to facilitate the flow of information in a timely and speedy manner without any wilful intent on the part of the business to mar the legitimate interests of the copyright owners. Given that no direct financial gain is involved in such acts, we do not see any sufficient grounds for criminalising these *bona fide* business activities.

Having said that, we do not object to imposing criminal sanctions against serious and wilful piracy of printed works to protect the copyright of newspaper, magazines, periodicals and books, provided that the infringing copies made or distributed are for sale or for other direct financial gain. In this regard, we believe the “copyshop possession offence” under section 119A of the Copyright Ordinance should be able to effectively deal with these infringing activities.

3. Directors’ and partners’ criminal liability

Clauses 22 and 24 of the Bill propose that if a body corporate/partnership has done an act attracting the business end-user criminal liability, the director of the body corporate or the partner of the partnership responsible for the internal management of the body corporate/partnership will also be equally liable in the same case unless there is evidence showing that the director/partner has not authorised the infringing act to be done. FHKI strongly objects to this proposal for the following reasons.

- (a) Putting the burden of evidence on company directors/partners in copyright infringement cases is in contravention of the common law principle that an individual is presumed innocent unless proved otherwise by the prosecution. This requirement should only apply in crimes of a very serious nature, such as drug trafficking.
- (b) Many SMEs do not have the expertise and resources to develop and implement an elaborate system to manage intellectual property matters. It

is unreasonable to ask these SMEs to adopt a corporate governance standard as high as that of large companies.

- (c) Imposing personal liability on company directors/partners for minor offences (e.g. copyright infringement) will deter Hong Kong's entrepreneurial spirit and discourage investors from setting up businesses in Hong Kong.
 - (d) It is unreasonable to expect a company director/partner to be responsible for each and every personal belonging brought to the workplace by his/her employees. To ask the directors/partners to provide evidence showing that they have not authorised the infringing act to be done will impose undue burden on them. This is especially the case if a disgruntled employee tries to frame the employer by bringing pirated copies of a copyright work to the workplace.
4. Parallel importation of copyright works

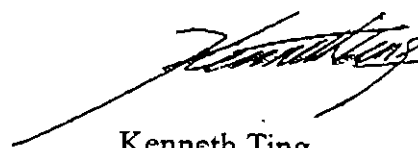
While we welcome the Government's proposal to shorten the ban on parallel imports of copyright works to nine months, our recommendation is to gradually phase out this restriction so as to give consumers more choices in purchasing products from overseas at more competitive prices.

The rationale behind our argument is that the primary aim of the Copyright Ordinance should be on combating copyright piracy. Copyright works that are parallel imported are genuine products, released lawfully outside Hong Kong. Those obtaining these copyright works by lawful means should have already fully requited the copyright owners. The existing ban on parallel imports, which only concerns the protection of the exclusive licensees' distribution rights, is beyond the scope of copyright protection. Since distribution rights are entirely a business strategy matter, it is inadvisable to cover its protection in the Copyright legislation.

For the same reason, we recommend that the existing civil liabilities on the use, possession and trading of copyright works that are parallel imported into Hong Kong should be lifted.

We hope the Bills Committee will give careful consideration to our views given above when scrutinising the Bill.

Yours sincerely,



Kenneth Ting
Chairman