

*City University of Hong Kong ♦ Hong Kong Baptist University
Lingnan University ♦ The Chinese University of Hong Kong
The Hong Kong Institute of Education ♦ The Hong Kong Polytechnic University
The Hong Kong University of Science & Technology ♦ The University of Hong Kong*

12 February 2007

The Hon. Sin Chung-kai,
Chairman,
Bills Committee on Copyright (Amendment) Bill 2006,
Legislative Council Building,
Central,
Hong Kong.

(Clerk to Committee fax no: 2121 0420)

Dear Mr Sin,

Universities and Parallel Importing

I am writing on behalf of all my fellow university Presidents, Vice-Chancellors and university librarians (Heads of Universities Committee – HUCOM, and Joint University Librarians Advisory Committee – JULAC) to express our collective concern over the possibility that exemption for the education sector from civil and criminal liabilities for parallel importing of copyrighted works will be removed in the Copyright (Amendment) Bill currently before your Committee. We regard this as a very serious development. Further to our previous submissions to Government and to your Committee, we wish to elaborate on the need for our universities here in Hong Kong to engage overseas agents in sourcing for print and multimedia items for the purposes of education and research.

1. As originally noted in the HUCOM Task Force on Copyright in Education submission on April 27th, 2006:

“Liberalization in the use of parallel imports

13. We welcome the criminal and civil liability exemption to educational establishments and libraries for importation and possession for use of parallel imports of copyright works. Such a provision will not only facilitate the import of copyright works that are considered to be of low or no commercial value and therefore not distributed by local suppliers, but will also allow educational establishments lawfully to acquire educational and research materials worldwide where such materials are more readily available and at affordable price.”

2. We are still of the view that universities in Hong Kong, and particularly their libraries, should lawfully be allowed to acquire educational and research materials from anywhere in the world - wherever they are legitimately most readily available. Given developments since our submission and the very strong opinions of the copyright owners on this subject, we think it necessary to emphasize the following points:

NOT FOR COMMERCIAL GAIN

3. To meet the pressing needs of their students and researchers, Hong Kong universities purchase materials directly from overseas agents for academic use only.

ITEMS UNAVAILABLE LOCALLY BECAUSE OF LOW OR NON-COMMERCIAL VALUE

4. It is common for a copyrighted work of low or non-commercial value – for example, a highly technical and specialized research report from a learned society - not to be distributed by any local supplier. However, such a work is often required by a local university for use in teaching and/or research.

LOCAL & OVERSEAS SUPPLIERS & PUBLISHERS OF PRINT MATERIALS

5. Hong Kong universities acquire a great deal of published print material from sources all over the world, both in book format, and in journal (magazine) format. The effective use and exploitation of such material lies at the heart of all academic endeavour in any leading-edge university. Universities in Hong Kong source materials through overseas agents for several reasons, for example:

A. Specialization:

Overseas agents specialize in dealing with academic materials. The *book* specialists often pre-announce the publication of textbooks and research monographs and dispatch them to universities in the same week they are published in the country of origin. The *journal* specialists have direct contracts with journal publishers in the country of origin and spend a great deal of effort on our behalf expediting speedy delivery and locating missing issues and back-runs of journals.

B. Value Added Services – Pre-processing and Out-of-Print Supply

Major international academic library book specialists provide many value-added services on which the smooth functioning of any university library relies. For example, most pre-process books so that they are 'shelf-ready' as soon as they arrive in the Library. These vendors also search for and provide out-of-print or obscure foreign titles. One major international book vendor service of this kind is the provision of accompanying bibliographic catalogue descriptions provided for each individual book ordered. This helps Hong Kong universities' libraries reduce staff costs and local duplication of effort. In turn, the vendors justify the often subsidized expense of mounting such services by doing business with libraries spread across multiple continents with consequent economies of scale.

C. Value Added Services - Books Provided via Approval Plans

Hong Kong universities' libraries often obtain many scholarly books through 'approval plans'. This means that each university library, in conjunction with a specialist international academic vendor, profiles its academic requirements across the whole subject spectrum of what is taught and studied in the scholarly community it serves. Then the vendor air-freights books *immediately upon publication* to the library on a sale or return basis. This service is vital to secure valuable, relevant academic research titles just as soon as they are published in the country of origin. Academic libraries throughout the developed world make use of such plans. Students and scholars at universities in Hong Kong would be at a distinct disadvantage if they could no longer make use of such services.

6. There are no booksellers in Hong Kong who would claim the ability to sell materials from publishers worldwide with such an extensive range of value-added professional specialist services. Notwithstanding this, universities in Hong Kong have never had any wish to undercut the legitimate interests of local booksellers and publishers. We have always supported local publishers and vendors and spend significant sums on their products and services. For example, Hong Kong universities value local vendors' expertise in sourcing print Chinese material. However, local booksellers' capacity to handle the broad spectrum of universities' requirements for teaching and research at a tertiary level can be limited. Even for Chinese print materials, one major local supplier recently ceased sourcing Mainland books to local universities because it found that it did not make a profit supplying scholarly books to university libraries; instead, it chose to concentrate its resources and manpower upon operating direct sales to the public.

7. If the Law bans parallel importing of print material, and furthermore does not exempt universities, universities in Hong Kong will, of necessity, have to check with the local agents first before referring to overseas agents to purchase scholarly books and journals. Requiring university libraries in Hong Kong first to try to find a local source for recently published material (even assuming there are businesses in town that could eventually supply it), means that universities in Hong Kong will be at a disadvantage compared to elsewhere in the

developed world because they cannot obtain scholarly materials as promptly and as cost-effectively. If exemption is not granted, there is the possibility that: (a) the effectiveness of the procurement process would be compromised; and/or, (b) a university in Hong Kong would completely fail to acquire said print material, because by the time it was known that local sources could not supply it, the work might be out of print and unavailable anywhere. Scholarly books are published in short runs of a few hundred copies and are seldom reprinted.

LOCAL SUPPLIERS & MULTIMEDIA PRODUCTS

8. As we have indicated before, parallel-imported videocassettes, DVDs and similar products are needed for teaching and research purposes, especially when the contents of the imported works include episodes, shots and/or scenes that are not available in local editions. In particular, each edition of a film produced in a different country or at different time is a unique version having its own unique value from the educational point of view. This is regardless of whether it is the original uncut edition, an edited version or a version dubbed in another language. Some of these versions may not be available from local suppliers but can only be imported from overseas. Universities in Hong Kong also need to source this type of material speedily.

AUTHORS' & PUBLISHERS' RIGHTS

9. It should be noted that the overseas suppliers used by university libraries in Hong Kong are all authorized agents of the publishers. If we purchase a book from an overseas supplier published by, say, Oxford University Press, Oxford University Press still receives its normal, worldwide profits entitlement, and passes any royalties owed to the book's author(s). Hong Kong universities never knowingly purchase versions of printed material restricted for use to a given country – for example, cheaper versions of textbooks earmarked for use by students in developing countries. Similarly, agents abroad will never knowingly supply such material to us. Thus, if universities in Hong Kong buy legitimate copies of copyrighted works from vendors or publishers in other countries for Hong Kong university students and faculty members, authors' and publishers' rights to profit from their work are sustained and supported.

FAIR TRADE

10. If exemption for the education sector from civil and criminal liabilities for parallel importing of copyright works is removed from the Copyright (Amendment) Bill, this might be regarded in many quarters as a move which seeks to control trade and promote monopolistic practices. If Hong Kong prides itself as one of the freest markets in the world, is a parallel import embargo not a restraint of fair trade, and a threat to Hong Kong's free market reputation? Is it not also a restraint on the legitimate scholarly pursuits, international reputation, and careers of our students and professors?

We understand the challenges for the Bills Committee in balancing the rights of the copyright owners against the demands of users of copyrighted material in the education sector. We hope that the Bills Committee will heed the universities' call, and allow the universities that serve the students, scholars and people of Hong Kong exemption in this particular regard,

Yours sincerely,



Edward K Y Chen
HUCOM Convenor

cc. members of HUCOM and JULAC