

THE HONG KONG REPROGRAPHIC RIGHTS LICENSING SOCIETY

EXECUTIVE SUMMARY

The Hong Kong Reprographic Rights Licensing Society (HKRRLS) disagrees with the Consultation Document's central assumption that ending the suspension of the April 2001 Amendments to the Copyright Ordinance is an "extreme" position.

The Document implies that the public fears criminal penalties for copyright theft in general. But government surveys indicate that prior to the introduction of the Amendments in April, the public strongly supported them.

After the Amendments went into effect, it is true that some members of the public expressed concern about the harshness of the penalties and the lack of clarity in the language. Legislators representing functional constituencies that could be affected by such stringent enforcement also expressed concern.

The loudest protests by far, however, came from the Commerce and Industry Bureau, the government agency responsible for the Amendments in the first place! The Bureau switched its position suddenly after coming under intense pressure from several key vested interest groups that do not want criminal penalties for piracy in print media under any circumstances.

(HKRRLS believes this is partly because a culture of piracy in print has been tolerated for so long in Hong Kong that several strategic businesses, universities and government offices assume that copying protected works without a license is fair game.)

The following reasons explain why HKRRLS is adamantly opposed to the permanent suspension of criminal penalties for end-user copyright infringements in print media (and cable TV) only.

* Such a suspension would be inherently unjust, denying the same due process to copyright owners in print that is routinely granted to copyright owners in all other areas of the intellectual property economy.

Singling out rights holders in print for exclusion would be the antithesis of equal treatment under the law.

(HKRRLS similarly takes issue with the Commerce and Industry Bureau's implied assumption that copyright owners of print media and cable television do not suffer enough piracy to warrant criminal penalties. The Society believes it is inappropriate for the government to speculate on which industry suffers the most when equal justice requires that all intellectual property infringements be treated the same.)

* The majority of people in Hong Kong believe local infringement of intellectual property rights is serious and damaging and that these rights should be protected as indicated in the government's November 2001 "Survey on Public Awareness of Protecting Intellectual Property Rights."

* Criminal sanctions for end-user copyright piracy are the international norm in copyright law and as such should be maintained in Hong Kong in all areas of the economy based on intellectual property. This is certainly true if the city hopes to nurture its stature as a world-class city.

* The possible suspension of criminal sanctions in print media in Hong Kong has already become an international issue with reprographic rights organizations worldwide expressing public concern. (Please see attached reprographic rights organizations May 2001 letters.) Should criminal sanctions in print indeed be suspended, international investor confidence and Hong Kong's world-class image would be damaged.

* Criminal sanctions against end-user copyright piracy in print should be maintained to give teeth to the Copyright Ordinance. Without criminal penalties, no one will take the Ordinance seriously and flagrant copyright violations of print media will continue. (Please see attached December 1, 2001 Hong Kong publishers' letter to Hong Kong Polytechnic University regarding widespread copyright infringements in the university in print media.)

* The HKRRLS is a fully functioning reproduction rights organization wholly capable of handling the added paperwork such an amendment would imply. As is, the

Society issues affordable and convenient collective licenses to reproduce the copyrighted material in its repertoire to representative bodies of schools, government departments, businesses and tertiary institutions. In exchange for an annual license fee, the general public in these groups is given the right to make a limited number of copies of an agreed-upon or "licensed use" amount of each work in the repertoire, which currently includes some 1.7 million publications worldwide. Copyright owners are then paid for the use of their work.

Separately, the HKRRLS does not support a "new permitted act" or licensing exemption to facilitate the uploading of copyrighted works to a school Intranet for access within the school since HKRRLS licenses already can be negotiated with schools to give access to uploaded protected material.

The Society also does not support a "new permitted act" or licensing exemption for transcribing protected works into Braille or other specialized formats by non-profit groups since HKRRLS licenses already can be negotiated with these groups to provide access to specialized formats.

Finally, HKRRLS sees no need to change current legislation and related regulations at this time. In the interests of justice, fairness and sheer effectiveness in promoting intellectual property rights in Hong Kong, HKRRLS supports the 1997 Copyright Ordinance and the reinstatement of the 2001 Amending Ordinance introducing criminal penalties for end-user copyright piracy in ALL areas of the economy based on intellectual property.

The Society believes that only when these two laws are fully implemented AS LEGISLATED will Hong Kong take its rightful place among the world's advanced societies, modern communities that understand the importance to their economies of encouraging creative thought and protecting intellectual property rights.

The laws themselves -- it should be noted -- are good, solid pieces of legislation. They provide an effective mechanism for setting "fair use" guidelines where licenses are not required and for setting "license use" guidelines where bodies such as HKRRLS can grant easy, low-cost access to protected works.

HKRRLS: WHO WE ARE:

The Hong Kong Reprographic Rights Licensing Society (HKRRLS) is a non-profit, volunteer organization of 54 local authors and publishers dedicated to protecting the intellectual property rights of members and others involved in Hong Kong print media.

Established in 1995, the Society provides public access to the copyrighted works in its repertoire by issuing affordable and convenient reproduction licenses to schools, businesses and government departments and then distributing the money from those licenses to the copyright owners.

Since its founding, HKRRLS has grown and developed into a full-fledged, internationally recognized reprographic licensing organization. Registered in Hong Kong, in 1996 the Society joined the Brussels-based International Federation of Reproduction Rights Organization, IFRRO, the largest photocopying licensing organization in the world. The affiliation has given HKRRLS the authority to represent some 1.7 million publications worldwide, including those in its own repertoire.

Today, the Society protects and enforces the rights of its members in Hong Kong and abroad. It also promotes public awareness and understanding of Hong Kong's 1997 Copyright Ordinance, which brought local intellectual property rights up to international standards, and its April 2001 Amendments which introduced criminal liability for end-user copyright infringement, also in keeping with international norms.

LICENSING AGREEMENTS

In March 2000, HKRRLS successfully negotiated on behalf of its members its first, three-year, photocopying licensing agreements with more than 1,200 local primary and secondary schools.

These licenses, called "blanket" licenses, give the teaching staff the right to make a limited number of copies of an agreed-upon amount or percentage of all the works in the repertoire. (Under HKRRLS "licensed use" guidelines for educational institutions, the maximum amount allowed is 1 copy of no more than 10 percent of any single text.)

They marked the beginning of public awareness in Hong Kong of the need to balance the rights of copyright owners in print media with the needs of end-users to easy, quick and lawful access to protected information.

In March 2001, the Society reached a collective licensing agreement with the Hong Kong government that granted another three year, blanket license -- this time to 170,000 civil servants -- for a maximum number of 1. copy of no more than 10 percent of any work in the repertoire.

In November 2001, the Society began negotiations with several of the territory's 300 photocopy shops for a collective licensing agreement that would grant them a blanket license for reproduction rights. The negotiations are expected to lead to an agreement sometime in 2002 and will set an example for other photocopy shops to follow.

In February 2001, the Society proposed negotiations to the Hong Kong General Chamber of Commerce for a collective licensing agreement that would cover reproduction rights within many of the territory's small and medium-sized businesses represented by the Chamber. The negotiations are expected to begin sometime in 2002.

Currently, the Society is negotiating with a task force set up by eight Hong Kong tertiary institutions over the terms of their blanket licensing agreement, which is expected to begin in early 2002.

Finally, the Society is already offering blanket, pre-screened and legal licenses to a variety of businesses and non-profit groups.

ENFORCEMENT

In October 2001, HKRRLS worked closely with the Customs and Excise Department in helping it make its first arrests of three different photocopy shop operators who were reproducing textbooks without publisher consent. The action sent a clear warning to other copy shops to enter

into licensing agreements before reproducing whole or partial texts without permission.

LOBBYING

Since 1995, founding members of HKRRLS have consulted with the Hong Kong government in preparing what first became the 1997 Copyright Ordinance, the basis of today's legal protections for intellectual property rights in print and other mediums.

In subsequent years, the Society has consulted with the Hong Kong government on what became a three-year consultative process leading to the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 (passed by the Legislative Council on April 1, 2001.)

These Amendments imposed criminal sanctions against end-users for copyright piracy, among other provisions. They were intended to strengthen the 1997 Copyright Ordinance and are considered to have brought the Ordinance up to the highest standards of intellectual property protection worldwide.

In the summer of 2001, HKRRLS initiated the current, ongoing lobbying effort against the government's June 2001 decision to suspend for one year the criminal penalties for end-user copyright infringement in print and cable television only.

The government suspended the penalties arguing that in these two intellectual property industries alone they had "triggered a heated debate in the community" and raised "concern that the new law impaired the dissemination of information in enterprises and teaching in schools."

In November 2001, as part of the ongoing public discussion of criminal penalties for copyright infringements, HKRRLS issued guidelines for permissible, free copying without a license, called "fair use." By setting the fair use limit at one copy of no more than five percent of any work in the repertoire within a month, the Society eased public concern over criminal prosecution for insubstantial copying.

HKRRLS: WHERE WE STAND TODAY

The HKRRLS sees no need to change current legislation and related regulations at this time. The Society believes that permanent suspension of the criminal penalties for end-user copyright piracy in print media (and cable TV) only would be a serious miscarriage of justice -- no one industry should be singled out -- and would gravely set back Hong Kong's considerable progress in combating intellectual property theft.

In the interests of justice, fairness and sheer effectiveness in promoting intellectual property rights in Hong Kong, the Society supports the 1997 Copyright Ordinance and the reinstatement of the 2001 Amending Ordinance introducing criminal liability for end-user piracy in all areas of the economy based on intellectual property rights.

Only when these two laws are fully implemented will Hong Kong take its rightful place among the world's advanced societies, modern communities that understand the importance to their economies of encouraging creative thought and protecting intellectual property rights.

The laws themselves -- it should be noted -- are good, solid pieces of legislation. They provide an effective mechanism for setting "fair use" guidelines where licenses are not required and for "license use" guidelines where bodies such as HKRRLS can grant easy, low-cost access to protected works.

The following issues have been raised in the Commerce and Industry Bureau's October 2001 "Consultation Document" entitled "Review of Certain Provisions of Copyright Ordinance." The accompanying responses from HKRRLS are meant to help clarify for its members, the government and the public exactly why the Society does not support a permanent suspension of the 2001 Amending Ordinance.

I. CRIMINAL PROVISIONS RELATED TO END-USER PIRACY

The HKRRLS is opposed to lifting criminal sanctions related to end-user copyright piracy in print media (and cable TV) only for four main reasons:

1. It would be discriminatory treatment. To exclude copyright owners in print (and cable TV) from among every other intellectual property rights holder protected by the sanctions would be blatantly unfair and unjust; not in keeping with equal treatment under the law.
2. Criminal sanctions against end-users for copyright infringements in print media are the international norm and thus in keeping with Hong Kong as a world-class city. (Please see attached International Federation of Reproduction Rights Organization May 1, 2001 analyses of criminal penalties in print media in five English-speaking countries.)
3. copyright protection for print media will not be taken seriously in Hong Kong, where infringements cause copyright owners tens of millions of dollars a year in losses, until the law has teeth.
4. The law, as is, is a good, effective mechanism for setting "fair use" guidelines where no license is required and for setting "license use" guidelines where bodies such as HKRRLS can grant easy, low-cost legal access to protected works.

Regarding the specific "issues of concern" on criminal provisions raised in the document, the HKRRLS

responds point by point: (Italics are used to distinguish between government issues and the HKRRLS response.)

1.6a. *Whether criminal sanctions should apply to the possession of an infringing copy of a copyright work in 'business' activities of a non-profit-making nature.*

This is not an issue as criminal sanctions involving non-profit work are already exempt from criminal action in s. 118 (1) (f) of the 1997 Copyright Ordinance.

1.6b. *Whether employees in possession of an infringing copy supplied by the employer for use in business should be criminally liable.*

The HKRRLS does not support criminal liability for employees acting at the behest of employers. The Amendment was intended to hold employers liable for infringements, not employees.

1.6c. *Whether end-user criminal provisions should apply only to copyright works afflicted by rampant piracy.*

All infringed copyright works should be subject to criminal sanctions not just those "afflicted by rampant piracy." This view supports basic fairness and equal treatment under law. The HKRRLS also does not believe government should be in the position of deciding which kind of copyright piracy is rampant but rather should leave that to affected copyright owners.

1.6d. *Whether certain acts of the end-user which infringe copyright but which do not give the end-user any commercial advantage or private financial gain should be exempt from criminal liability.*

Yes, sometimes, but not always. The HKRRLS believes exemption from criminal liability must be decided on a case-by-base basis. This is because an end-user's commercial advantage or private financial gain in print is often not the issue. The concern, more likely, is whether the copying goes beyond "fair use" which typically means making a single copy of no more than 5 percent of a single work in a month.

For example, a teacher who copies 100 sets of a textbook does not gain commercially or financially but clearly has harmed the publisher's interest.

1.6e. *Whether the expression "for the purpose of, in the course of, or in connection with, any trade or business" introduced by the Amending Ordinance has cast the criminal net too wide.*

The HKRRLS would support deleting the phrase "in connection with" so that "activities incidental to or marginally related to business will be outside the scope of the end-user criminal provisions." The Society takes this position because the phrasing without the clause would still allow copyright owners to exercise their rights.

II. **PERMITTED ACTS FOR EDUCATIONAL PURPOSES**

The HKRRLS supports the concept of "fair use," the widely accepted designation of the amount or percentage of a protected work that can be reproduced legally without a license. The fair use percentage negotiated by HKRRLS with primary and secondary schools and under negotiation with tertiary institutions is set at a single copy of no more than 5 percent of a single work in a month. This is the standard fair use amount for educational institutions worldwide.

The HKRRLS does not support exempting teachers from the provisions that state copying is not permitted where licensing agreements are available or where the person making the copies "knew or ought to have been aware of" licensing provisions. To remove a teacher's liability

under these circumstances would unfairly tip the balance of power between the copyright owners and the end-user to the end-user -- and render meaningless the very notion of copyright licensing.

Regarding specific "issues of concern" on "Permitted Acts for Educational Purposes" raised in the document, the HKRRLS responds point by point:

2.13a. *The approach to be adopted for clarification of the meaning of "to a reasonable extent" and 'passages' in section 41 and 45 of the Copyright Ordinance.*

The HKRRLS supports a non- statutory approach to "things done for the purpose of instruction or examination," (section 41) and "reprographic copying made by educational establishments of passages from published works" (section 45).

This kind of unwritten approach to permitted reproduction would provide a more flexible environment in which copyright owners and end-users could reach an agreement on fair use and licensed use. To this end, the HKRRLS will submit fair use and licensed use guidelines to the government for reference.

2.13b. If a statutory approach is to be adopted, the elements that should be covered in clarifying the meaning of the two expressions.

The HKRRLS does not support a statutory approach to licensing. If the government for some reason should institute such an approach, as has been done in Germany and Australia, among other countries, it would have to also institute a statutory or compulsory licensing system to maintain a balance between the rights of copyright owners and users. This system, in the Society's view, would be unduly complicated, costly and give the government undue power.

2.13c. Whether the act of recording or copying permissible under sections 44 and 45 of the Copyright Ordinance should be permitted regardless of whether a license under the licensing schemes is available.

The HKRRLS does not accept reproduction by educational establishments of broadcasts and cable programs (section 44) or of passages from published works (section 45) regardless of whether licenses are

available. To institute such a broad exemption for educational establishments would be grossly unfair, would obviate the need for licensing agreements at all and would not be in keeping with international norms.

Such an exemption would also throw all power between copyright owners and users to the users. As is, licensing agreements are the only protections available to copyright owners -- and they're minimal at that.

2.13d. Whether a new permitted act should be provided under the Copyright Ordinance to facilitate the

uploading of copyright works to a school INTRANET for access within the school.

The HKRRLS does not support a new permitted act or licensing exemption for the uploading of copyright works to a school Intranet since licensing agreements that include uploaded protected material are already available through the HKRRLS in the form of blanket licenses.

(Blanket licenses, which typically don't exceed three years, are issued in exchange for an annual fee for permission to make a limited number of copies of a designated proportion - usually 10 percent of any one work for educational institutions - of all works in the HKRRLS repertoire, including protected materials online.)

When considering a new permitted act for uploading protected material to the Intranet, the government must realize that if it goes ahead, a loophole in the law would result unless it also relaxes standard copyright restrictions against widespread re-formatting, forwarding and long-lasting electronic storage of protected work currently online.

III. **PERMITTED ACTS FOR VISUALLY-IMPAIRED PERSONS**

The HKRRLS supports the concept of "fair use" for visually impaired persons. Fair use is the widely accepted designation of the amount or percentage of a protected work that can be reproduced legally **without** a license. The fair use percentage negotiated by HKRRLS with primary and secondary schools and under negotiation with tertiary institutions is set at 1 copy of no more than 5 percent of a single work in a month. This limit would be used also in fair use guidelines for educational institutions working with the visually impaired.

Regarding specific "issues of concern" on "Permitted Acts for Visually Impaired Persons" raised in the document," the HKRRLS responds point by point:

3.4a. Whether a new permitted act should be provided for the transcribing of works in the printed format into Braille, large-print, talking or other specialized formats by non-profit-making bodies for the exclusive use of visually impaired persons...

The HKRRLS does not support a new permitted act or licensing exemption for transcribing protected works into other formats for the visually impaired since HKRRLS licensing agreements and fair use guidelines are already in place to protect both copyright owners and handicapped users.

The HKRRLS believes its guidelines on fair use for schools and the blanket licenses already issued to primary and secondary schools and under negotiation with tertiary institutions would provide a working model for reproduction licenses for special-need schools.

3.4b. Whether the acts mentioned in paragraphs 3.1 (to allow people with disabilities to make copies of broadcasts and programs) and 3.2 above (to allow the visually impaired to transcribe works into Braille and other formats) should be permitted whether a licensing scheme is available or not.

No. It is not acceptable to allow people with disabilities to transcribe works into other formats regardless of licensing agreements because 1) those formats are protected by copyright; 2) granting such exemptions would prejudice the legitimate interests of copyright owners and thus tip the balance of power unfairly to users and 3) such wholesale exemptions would render meaningless all licensing agreements (the only copyright protection currently available.)

Such exemptions are also not in keeping with the norms of international copyright law where the balance of power between copyright owners and users is assiduously preserved.

IV. PARALLEL IMPORTATION OF COPYRIGHT WORKS OTHER THAN COMPUTER SOFTWARE

Though HKRRLS has not taken a position on all the copyright issues affecting parallel imports, the Society does support criminal sanctions against those commercial entities, such as photocopying shops, that would reproduce entire texts, including those that are parallel imports, without permission.

Regarding specific "issues of concern" on "Parallel Importation of Copyright Works Other than Computer Software" raised in the document, the HKRRLS responds point by point:

5.14a. Whether the civil and criminal liability against parallel importation should be removed, and whether there should be any exception.

The civil and criminal liabilities against infringements of copyright in material that is parallel imported should not be removed under any circumstances. To do so would destroy the normal functioning of the market and encourage even more copyright infringements since consumers could not distinguish between parallel-imported material and pirated material.

5.14b. If there should continue to be criminal sanction against parallel importation of and subsequent dealing in some types of copyright work, and whether the current 18-month should be reduced.

The HKRRLS believes criminal sanctions against parallel importation of and subsequent dealing in some types of copyright work should continue, and that the current 18-month period (after which a parallel import would be subject to criminal sanction) should not be reduced.

5.14c. Whether the civil and criminal liability imposed on end-users of parallel imported copies of copyright works in business should be removed.

The HKRRLS believes that liability, whether civil or criminal, for end-users of parallel imported copies of protected works should be decided on a case-by-case basis. For example, the Society supports criminal sanctions for commercial enterprises such as photocopying

shops that reproduce whole texts of parallel imports and sell them in bulk. But for most users the Society believes civil sanctions are sufficient to protect copyright owners and educate the public about copyright law.

V. LICENSING BODIES

The HKRRLS is a registered licensing body under Section 149 of the Copyright Ordinance and committed to providing convenient, affordable licensing services to the public to reproduce a portion of each of the some 1.7 million copyrighted publications in its repertoire. The licenses include reproduction rights in many formats such as print, digital and Braille.

Regarding specific "issues of concern" on "Licensing Bodies" raised in the document, the HKRRLS responds point by point:

7.13a. Whether the Copyright Tribunal should be replaced with an arbitration system to adjudicate disputes between copyright users and licensing bodies.

Presently, this is not necessary. The Tribunal is still the most effective way to resolve copyright disputes as the operation is small, efficient and relatively inexpensive, especially compared to the costs of operating a full-fledged government arbitration system. The issue should be revisited after several years.

7.13b. Whether licensing bodies should be mandated to be registered and to publish their scales of royalty charges.

Yes. The HKRRLS is already a registered licensing body that publishes its licensing fees and royalty rates.

APPENDIX

1. "The Chairman's Report on Copyright Theft in Hong Kong," Hong Kong Reprographic Rights Licensing Society. **December 19, 2001.**
2. Hong Kong Reprographic Rights Licensing Society "Guidelines on Fair Use in Print Media." November 14, 2001.
3. Hong Kong Reprographic Rights Licensing Society "Notes on Fair Use Exceptions in Foreign Countries." December 17, 2001.
4. Highlights from the "Survey on Public Awareness of Protecting Intellectual Property Rights" by the Intellectual Property Department of the government of the Hong Kong Special Administrative Region. November 2, 2001.
5. Hong Kong publishers' letter to Hong Kong Polytechnic University complaining about widespread copyright infringement in print media in the university. December 1, 2001.
6. Supporting documents from reprographic rights organizations worldwide expressing concern about Hong Kong's year-long suspension of criminal sanctions in print media. May 2001.
7. Confirmation letter from the International Federation of Reproduction Rights Organization to the Hong Kong Reprographic Rights Licensing Society regarding affiliation and membership. 15 October 1999.
8. Comparative analyses on criminal penalties for copyright infringement in print media in five English-speaking countries by the International Federation of Reproduction Rights Organization. May 1, 2001.

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The "Logistics" of Copyright Theft

By Fred Armentrout

Chairman, Hong Kong Reprographic Rights Licensing Society (HKRRLS)

Hong Kong's Commerce and Industry Bureau has released a "consultation document" entitled a, "Review of Certain Provisions of Copyright Ordinance" (dated October 2001, although not released until early November). It calls for response from the interested public by 31st December, on whether or not to lift or make permanent or otherwise deal with the suspension of amendments that criminalise the theft of copyrighted works in print or cable television.

These amendments came into effect in April of this year, to criminalise the theft of all copyrighted works. They were challenged by powerful functional constituencies within a week of their effective dates. Those challenges were made by representatives of functional constituencies from tertiary education and from the Hong Kong General Chamber of Commerce, the latter ostensibly in the name of SMEs (Small and Medium Sized Enterprises).

These protests in the Legislative Council were quickly followed by a public apology from Brian Chau Tak Hay, the director of this government bureau, which has oversight of the Intellectual Property Department. IPD is the government arm that had created the amendments in the first place.

The amendments were surgically "suspended," only as they apply to print media and cable television, for one year from this past July, via passage of a new "Miscellaneous" amendment (until July 2002), under a bill drafted by this bureau.

At the time of passage, another public apology was made by the LegCo convenor of its Intellectual Property Panel, for failing to have protested its passage the first time round, in 2000.

Criminal penalties for the theft of software, music, films or television dramas have remained in force throughout. In short, all of the noise around these suspensions has centered on penalties for theft of print and cable television copyrights.

There are many theories as to why a government most notable for its glacial pace of reforms, so suddenly got cold feet in pursuit of the full implementation of amendments to the 1997 Copyright Ordinance, that it had worked on for three years prior to passage, from 1997 to 2000, and had passed through the normally combative Legislative Council without a murmur of protest last year. Government had its corrective "suspension" in place within about six weeks.

One story, which may be apocryphal, holds that Chief Executive Tung Chee-hwa, who was in Washington, D.C. at the time of the amendments' effective date, had been told by his confused government bureaucrats that they feared sending local news clips he'd requested, as it would be illegal under the new amendments. Enraged at his administration's dysfunctionality, he instructed his commerce bureau chief to get rid of this poorly crafted law, or so goes the story that has been often repeated but never verified.

Fair use guidelines

Fair use guidelines are to define the copying limits in which copyright users are allowed to make copy of works without getting permission from copyright owners. The Hong Kong Publishing Federation, The Anglo-Chinese Textbook Publishers Organisation, The Hong Kong Educational Publishers Association and Hong Kong Reprographic Rights Licensing Society have jointly developed and endorsed the following guidelines which apply to photocopying, faxing and scanning for educational, private study and research purpose only (please refer to sections 38, 41 & 45 of Copyright Ordinance).

(1) For educational establishment as defined in the Copyright Ordinance:

- 1.a. Not more than 5% of a single work in a month, and
- 1.b. Not more than 10% in total of a single work, or
- 1.c. Not more than 1,000 words, whichever the lesser, and
- 1.d. The above percentage does not make up more than one chapter.
- 1.e. Not more than one copy.

(2) For business sector:

- 2.a. Not more than 1% of a single work in a month, and
- 2.b. Not more than 3% in total of a single work,
- 2.c. Not more than one copy.

(3) For user groups other than (1) and (2) (eg: non-profit making bodies):

- 3.a. Not more than 3% of a single work in a month,
- 3.b. Not more 5% in total of a single work,
- 3.c. Not more than one copy.

In excess of these fair dealing limits, the users are required to apply for licences from related copyright owners or registered licensing body (eg: Hong Kong Reprographic Rights Licensing Society tel: 2291-3883, fax: 22913388, [email:hkrrls@hutchcity.com](mailto:hkrrls@hutchcity.com)).

- Its indifference sends this message to young end-users: if enough people steal at will, it's no longer theft.

Hong Kong has the chance to bring this corrupted system of exchange into a virtuous circle of honest transactions, honestly conducted. Hundreds of the people of Hong Kong contacted our office in efforts to secure legal licenses to make photocopies, when the amendments first came into effect. We take that to mean honest people here understand publishers must make a living too, and will find no objection to paying fair rates to authors and publishers for those works they need to photocopy. That is, unless Hong Kong government tells them, "never mind".

provide examples of losses to their companies due to copyright theft. His involved a book called, "Fundamentals of Logistics Management," ordered by the campus bookshop of Hong Kong Polytechnic University. As Mr. Ho tells it:

"We wrongly supplied a different book with similar title. A student purchaser was unaware that the campus bookshop had stocked the wrong title, so the shop manager contacted the lecturer to inform him of the mistake and said the student could exchange the book he'd purchased for the correct one.

"The student instead asked for a refund, and had brought back the original book in damaged condition, three days after purchase. The shop refused the refund. So the student went to his lecturer for help, who returned with him to the bookshop.

"With his lecturer present, the student explained he was the 'course coordinator' who had been responsible for arranging 89 copies of the fully-photocopied reproduction of the text for his classmates to use, and that the book he'd purchased was used as the master copy. He blamed the copy-shop for damaging the book.

"The bookshop finally agreed to replace the incorrectly copied book with the right one and it returned all unsold copies of the incorrect title to us. It subsequently ordered only 10 copies of the correct title, by courier, of which only four were eventually sold."

Here is a portrait of Hong Kong's "Logistics Management" of print copyright theft:

- Bookshops under-stock because they know students won't buy much of what they can easily have copied.
- Copy-shops are the major publishers of local college textbooks at the start of each new school term.
- Students consider it their right to have textbooks photocopied at will for distribution by designated "coordinators" to the entire class.
- Teachers consider it their duty to assist students in the matter.
- Come the new term, lecturers find that, anticipating losses to copyshops, book publishers under-print their projections of the number of books needed for coursework.
- Teachers then complain loudly about how unavailability of books drives students to photocopy huge numbers of complete textbooks or major portions thereof, from their reading lists.
- Hong Kong government completes the devious circle by, at best, ingenuously asking, "What rampant theft of printed products?" or more perniciously, as in this consultation paper, assuming the ostrich position, to pretend it doesn't exist.
- Government instructs Customs & Excise Department staff to focus raids on more high-profile items, like software and CD movies, that help keep off unsavory international notice, like placement on America's annual "watch-list" of rogue states who encourage the theft of intellectual property.
- Government action does little or nothing to loosen the bonds of a black market in books that is older and far more woven into Hong Kong society's business and education practices than the presence of fake CD factories.

Government's argument as to why it should not "consider that the law should treat all types of copyright work equally" is that the intention of the criminal penalties was to deal only with those "copyright works afflicted by rampant piracy" and the consultation document explicitly excludes print copyright products from its list of such afflicted copyright holders.

Never mind that this convoluted logic of "rampant" versus (what?) something less than rampant theft is more worthy of a totalitarian state, than of one committed to the "rule of law," a basic premise of which is equal treatment of everyone.

What is most disturbing to the Hong Kong Reprographic Rights Licensing Society is the assumption by a government agency, based on no analysis whatsoever, that only government's "chosen" copyright owners, those of software, movies, music and tv dramas, suffer rampant piracy, and those of print media and cable television do not. This is the worst kind of exercise in dishonest "disinformation" and unworthy of a government that prides itself on striving to sweep copyright theft out of the SAR.

The best evidence for its prevalence and the importance of addressing print copyright piracy in Hong Kong is *prima facie*, the fact that this entire "public consultation" would not exist were it not for how fearful certain powerful vested interests are of criminal consequences for such theft.

There are two very good reasons why "rampant" piracy of print media does not make the headlines of Hong Kong news media:

- 1) Because the Customs & Excise Department has spent years refusing repeated requests by book publishers to raid copyshops, who do a thriving illegal business as black market publishers for the book needs of students and teachers here (it finally conducted raids and arrested three shop owners this year, shortly before the disputed amendments went into effect):
- 2) Because so deeply woven into the fabric of Hong Kong's education, governance and business conduct is the theft of copyrighted works in print, that it has taken on the dimensions of some sort of "birthright" to do so.

This combination of enforcement neglect and black market book publishing has created its own "devious circle" of self-reinforcing business relationships, that completely distort the educational books market.

To assess how "rampant" such theft is, HKRRLS sponsored a study with cooperation of several local schools. Conducted by Survey Research Hong Kong (SRH) in 1996, the survey found that teachers, on a yearly average, photocopy about 382 pages a day and students copy about 30 daily. Together, they copy over 150,000 pages per year. Most of those copies (72% of teachers and 58% of students) are made from works published in Hong Kong. This poses a direct economic threat to the survival of local publishers, who are mostly SMEs (Small and Medium Sized Enterprises).

What happens in such an environment is exemplified by a report from Jason Ho, of McGraw-Hill International Enterprises, Inc. HKRRLS has asked its members to

Government's argument as to why it should not "consider that the law should treat all types of copyright work equally" is that the intention of the criminal penalties was to deal only with those "copyright works afflicted by rampant piracy" and the consultation document explicitly excludes print copyright products from its list of such afflicted copyright holders.

Never mind that this convoluted logic of "rampant" versus (what?) something less than rampant theft is more worthy of a totalitarian state, than of one committed to the "rule of law," a basic premise of which is equal treatment of everyone.

What is most disturbing to the Hong Kong Reprographic Rights Licensing Society is the assumption by a government agency, based on no analysis whatsoever, that only government's "chosen" copyright owners, those of software, movies, music and tv dramas, suffer rampant piracy, and those of print media and cable television do not. This is the worst kind of exercise in dishonest "disinformation" and unworthy of a government that prides itself on striving to sweep copyright theft out of the SAR.

The best evidence for its prevalence and the importance of addressing print copyright piracy in Hong Kong is *prima facie*, the fact that this entire "public consultation" would not exist were it not for how fearful certain powerful vested interests are of criminal consequences for such theft.

There are two very good reasons why "rampant" piracy of print media does not make the headlines of Hong Kong news media:

- 1) Because the Customs & Excise Department has spent years refusing repeated requests by book publishers to raid copyshops, who do a thriving illegal business as black market publishers for the book needs of students and teachers here (it finally conducted raids and arrested three shop owners this year.
- 2) Because so deeply woven into the fabric of Hong Kong's education, governance and business conduct is the theft of copyrighted works in print, that it has taken on the dimensions of some sort of "birthright" to do so.

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Letterhead of Hong Kong Reprographic Rights Licensing Society

Note on the fair dealing exception in other countries

There are some misleading quotations in the Consultation Document as regards the following countries:

- Germany
- Singapore
- Australia

To achieve an appropriate and rightful protection of copyright, there are conditions available in these countries to meet the international standard. The conditions in the legislatures are based on the judgement on more the quality of the copyright work copied

than quantity. This is the international practice that we do not recommend the Hong Kong Government to change.

To provide the public a clear understanding of how they can make reprographic reproduction without worrying about the rightsholders' complaint, the international practice is to have a "guideline" issued by the rightsholders.

The advantage of using the "guidelines" can be cited from the UK's experience. In the 70's, when photocopying was expensive and not common, the British publishers and authors issued a guidelines that they would not make any complaint about photocopying less than 10% of a publication. Later on, photocopying was cheaper and cheaper and had become more common. The guidelines was revised as followings:

- less than 5%, or no more than 1,000 words or;
- no more than one chapter;
- whichever is less.

The revision was supported by both the rightsholders and general public in U.K.

In U.S.A., the guidelines was also made to apply for educational uses:

- less than 10% or;
- no more than 1,000 words or;

Fair dealing guidelines

Fair use guidelines are developed to allow uploading of copyright works to school intranet.

- 1a. Not more than 1% of a single work in a month,
- 1.b. Not more than 3% in total of a single work,
- 1.c. Password control required for classroom viewing,
- 1.d. Audiences are restricted to one class of not more than 50 persons,
- 1.e. Printing, saving, forwarding or hyperlinking are not allowed,
- 1.f. The data must be destroyed in 7 days upon uploading on the school intranet.

In excess of these fair dealing limits, the user are required to apply for licences from related copyright owners or registered licensing body (eg: Hong Kong Reprographic Rights Licensing Society tel: 2291-3883, fax: 2291-3388, email: hkrrls@hutchcity.com).

Letterhead of Hong Kong Reprographic Rights Licensing Society

- no more than one article,
- whichever is less

In both countries, a very active licensing society offers the general public licensing arrangement to make copies over and above the restriction of the "guidelines" and to make multiple copies, which otherwise is an infringement - however small the quantity is copies.

In Australia, the situation is similar to the U.S.A., but it is written in their copyright laws that all users should obtain a reprographic licence from a licensing society - a statutory licence legislature. Hence the legislation has ensured reasonable remuneration to the rightsholders for the copying allowed by the its laws.

In Germany, the legislature ensure royalty is paid for each and every photocopy through a levy on the reprographic machine and its materials, eg: paper.

In France, no fair dealing exemption is available as there are collecting societies approved by Ministry of Culture authorizing copies for the purposes of sale, rental, publicity or promotion.

In Hong Kong, the school teaching staff can make photocopies of book (up to 10%) Under a licence issued by the HKRRLS in April 2000 to cover 1,200 primary and secondary schools. Some members of the educational institutions were puzzled but it was due to their ignorance. The licensing mechanism is available within a well defined fair dealing limit at a reasonable rate (HK\$0.15 per copy-page) remunerable to rightsholders for multiple copies made from their works for classroom use.

The HKRRLS is also in process of consulting both the schools and universities on their views of our proposed fair use guidelines and we wish that they are reasonable to request for an extent acceptable to the rightsholders. After the consultation, the HKRRLS and the local publishers' organizations will make a formal announcement of the "guidelines" through newspapers and other media.

HKRRLS joins with Federation of Publishing Federation, Anglo-Chinese Textbook Publishers Organisation, Hong Kong Educational Publishers Association and Hong Kong Publishers and Distributors Association to strongly recommend taking a non-statutory approach to ease the minds of the general public.

IPD Survey Highlights *

More peoples in Hong Kong believe that the problem infringing IP rights is serious, up to 55.3% of respondents as released in the latest survey from Intellectual Property Department.

Regardless of the fact that 74.3% of of respondents said they knew the laws to protect intellectual property are implemented in Hong Kong. they saw the infringement activities are "reasonable" because 45.5% of them thought that it is accountable to have pirated products at a cheaper prices and the rest, even worse, knew that the illegal businessmen could make good profit.

Although the higher educated respondents (tertiary level) were more likely to consider "a student photocopies a reference book for the purpose of revision" an infringement on IP rights, less than half (45.3% this year) of respondents have been aware that it is an infringement for many years! Against the 94.1% awareness in selling VCD or computer software.

*statistics abstracted from IPD Awareness Survey

December 1th, 2001

Prof. Leung Tin Pui
 Vice-President (Student and Staff Development)
 Faculty of Communication
 AG716a
 Hong Kong Polytechnic University
 Hunghom, Kowloon
 Hong Kong

Dear Prof. Leung.

As representatives of the four major tertiary textbook publishers in Hong Kong, we are writing to express our grave concern about the problem of illegal photocopying of books by Hong Kong Polytechnic University students.

Over the past few months, we have observed that some of the students at HKPU campus -

- ◆ photocopied significant proportions of books without the permission of the copyright owners;
- ◆ possessed illegal copies of whole book or significant proportions of book; and
- ◆ purchased illegal copies of whole book from photocopy shops outside campus.

As outlined by the Intellectual Property Ordinance, it is an offence for individuals/organizations to

- ◆ participate in copyright piracy;
- ◆ copy material beyond the set limit; or
- ◆ possess illegally copied material.

Based on our observation and reports, some of your students have infringed this ordinance.

Copyright law protects the product of human creativity. As the major international publishers in Hong Kong, we need to protect our authors' interests in order to be able to continue the publishing of high-quality materials. Illegal photocopying erodes our ability to do this.

Being one of the premier tertiary institutions in Hong Kong, we are sure that you support the Intellectual Property Ordinance and want to take every measure to prevent any possible infringement of the law. We would therefore be grateful if we could meet you on the 6th or 7th of December, 2001. At this meeting, we hope to explore some common measures to help bring an end to illegal photocopying. Kindly contact Mr. Jason Ho, at 27306640 or email at jason_ho@mcgraw-hill.com, to arrange the meeting.

Thank you for giving this matter your urgent attention.

Yours sincerely,

Teresa Leung
 Thomson Learning

Jason Ho
 McGraw-Hill Education

Derek Lee
 John Wiley & Sons
 (Asia)

Timothy Chan
 Pearson Education
 North Asia

Copies to: Viking Yam -Hong Kong Reprographic Rights Licensing Society
 Andrew Hoffman - Association of American Publishers

FRRO Paper & Statements

- Materials relating to Hong Kong's suspension of copyright ordinance (pdf files):
 - Further Submission from IFRRO on the Intellectual Property (miscellaneous amendments) Ordinance 2000 and the Copyright (suspension of amendments) Bill 2001 (29 May 2001)
 - Letter from Secretary General to Mr. Tung Chee Hwa, Chief Executive of Hong Kong SAR (18 April 2001)
 - Letter from Chairman (HKRRLS) to Mr. Kenneth Ting Woo-shou, JP, Chairman, Panel on Commerce & Industry (24 April 2001)
 - Letter from Mrs. Rita FAN, President of the Legislative Council (25 April 2001)
 - IFRRO's Submissions to LegCo (25 April 2001)
 - IFRRO's Analysis of Legislation in Hong Kong and elsewhere (1 May 2001)
 - Excerpts of Criminal Provisions for Copyright Infringement in Various National Laws
 - Letter from Michael Fraser/CAL to Mr. Kenneth Ting Woo-Shou, JP, Chairman Panel on Commerce and Industry, Legislative Council (1 May 2001)
 - Letter from Peter Shepherd/CLA to Mr. Tung Chee Hwa, Chief Executive of Hong Kong SAR (3 May 2001)

International
Federation of
Reproduction
Rights
Organisations



Rue du Prince Royal 87
B-1050 Brussels

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Fax + 32 2 551 08 95

Bank account :
Banque Bruxelles Lambert
110-1350777-20

Chairman
André BEEMSTERBOER
The Netherlands

Secretary General
Olav STOKKMO

To Whom it may concern

Brussels, October 15th 1999

IFRRO (The International Federation of Reproduction Rights Organisations) is an international, non-governmental organisation representing 88 national Reproduction Rights Organisations (RROs) and national and international authors' and publishers association world-wide.

RROs act on behalf of both authors and publishers of published works whenever the individual exercise of their rights is impracticable. They began their activities originally in response to the need to license wide-scale photocopy access to the world's scientific and cultural printed works. Today the member associations of IFRRO collect and distribute remuneration for photocopying and certain digital uses. Through co-operation among RROs, collective and centralised management of reproduction and other relevant rights in copyright works are facilitated on an international basis.

HKRRLS (incorporated as Hong Kong Reprographic Rights Licensing Society, Limited on November 25th 1998) is a reproduction rights organisation (RRO) in membership of IFRRO established for the benefit of rightsholders in Hong Kong and across the world. In compliance with the Copyright Ordinance of Hong Kong, HKRRLS provides legal photocopy access to copyright works through licensing schemes. The royalty income collected by HKRRLS is subject to distribution to national and foreign authors and publishers on the basis of sampling systems or statistical surveys. IFRRO, being represented on the Board of HKRRLS will examine HKRRLS's audited accounts and other records in compliance with agreement between IFRRO and HKRRLS.

For further information on IFRRO and RRO's activities, please visit our web site at www.ifrro.org.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Olav Stokkmo', written over a white background.

Olav Stokkmo
Secretary General

UNITED KINGDOM COPYRIGHT, DESIGNS & PATENTS ACT 1988**S.107**

- (1) A person commits an offence who, without the licence of the copyright owner
- (a) makes for sale or hire, or
 - (b) imports into the UK otherwise than for his private and domestic use, or
 - (c) possesses in the course of business with a view to committing any act infringing the copyright or
 - (d) in the course of business:
 - (i) sells or lets for hire or
 - (ii) offers or exposes for sale or hire or
 - (iii) exhibits in public or
 - (iv) distributes or
- distributes otherwise than in the course of a business to such an extent as to affect prejudicially the owner of copyright an article which is and which he knows or has reason to believe is an infringing copy of a copyright work¹ -

AUSTRALIAN COPYRIGHT ACT (1968) (Cth) AS AMENDED**103 Infringement by sale and other dealings**

- (1) A copyright subsisting by virtue of this Part is infringed by a person who, in Australia, and without the licence of the owner of the copyright:
- (a) sells, lets for hire, or by way of trade offers or exposes for sale or hire, an article; or
 - (b) by way of trade exhibits an article in public;
- if the person knew, or ought reasonably to have known, that the making of the article constituted an infringement of the copyright or, in the case of an imported article, would, if the article had been made in Australia by the importer, have constituted an infringement of the copyright.
- (2) For the purposes of the last preceding subsection, the *distribution* of any articles:
- (a) for the purpose of trade; or
 - (b) for any other purpose to an extent that affects prejudicially the owner of the copyright concerned; shall be taken to be the sale of those articles.

132 Offences¹

- (1) A person shall not, at a time when copyright subsists in a work:
- (a) make an article for sale or hire;
 - (b) sell or let for hire, or by way of trade offer or expose for sale or hire, an article;
 - (c) by way of trade exhibit an article in public; or
 - (d) import an article into Australia for the purpose of
 - (i) selling, letting for hire, or by way of trade offering or exposing for sale or hire, the article;
 - (ii) distributing the article for the purpose of trade, or for any other purpose to an extent that will affect prejudicially the owner of the copyright in the work; or
 - (iii) by way of trade exhibiting the article in public;

¹ The provisions of s.132 are not set out exhaustively

if the person knows, or ought reasonably to know, the article to be an infringing copy of the work.

- (2) A person shall not, at a time when copyright subsists in a work, distribute:
- (a) for the purpose of trade; or
 - (b) for any other purpose to an extent that affects prejudicially the owner of the copyright;
- an article that the person knows, or ought reasonably to know, to be an infringing copy of the work.
- (2A) A person shall not, at a time when copyright subsists in a work, have in his or her possession an article for the purpose of:
- (a) selling, letting for hire, or by way of trade offering or exposing for sale or hire, the article;
 - (b) distributing the article for the purpose of trade, or for any other purpose to an extent that will affect prejudicially the owner of the copyright in the work; or
 - (c) by way of trade exhibiting the article in public;
- if the person knows, or ought reasonably to know, the article to be an infringing copy of the work.

- (3) A person shall not, at a time when copyright subsists in a work, make or have in his or her possession a device that the person knows, or ought reasonably to know, is to be used for making infringing copies of the work.

- (5AA) A person shall not cause:
- (a) a sound recording to be heard in public at a place of public entertainment; or
 - (b) a cinematograph film, in so far as it consists of visual images, to be seen in public at a place of public entertainment or, in so far as it consists of sounds, to be heard in public at such a place;
- if the person knows, or ought reasonably to know, that copyright subsists in the sound recording or the cinematograph film and that the copyright will thereby be infringed.

- (5A) A person must not provide, or by way of trade promote, advertise or market, a circumvention service if the person knows, or is reckless as to whether, the service will be used to circumvent, or facilitate the circumvention of, a technological protection measure.

- (5B) A person must not:
- (a) make a circumvention device; or
 - (b) sell, let for hire, or by way of trade offer or expose for sale or hire, or otherwise promote, advertise or market, a circumvention device; or
 - (c) distribute a circumvention device with the intention of trading, or engaging in any other activity that will affect prejudicially an owner of copyright; or
 - (d) by way of trade exhibit a circumvention device in public; or
 - (e) import a circumvention device into Australia with the intention of:
 - (i) selling, letting for hire, or by way of trade offering or exposing for sale or hire, or otherwise promoting, advertising or marketing, the device; or
 - (ii) distributing the device for trading, or for engaging in any other activity that will affect prejudicially an owner of copyright; or
 - (iii) exhibiting the device in public by way of trade; or
 - (f) make a circumvention device available online to an extent that will affect prejudicially an owner of copyright;

if the person knows, or is reckless as to whether, the device will be used to circumvent, or facilitate the circumvention of, a technological protection measure.

- (5C) A person must not remove or alter any electronic rights management information attached to a copy of a work or other subject-matter in which copyright subsists, except with the permission of the owner or exclusive licensee of the copyright, if the person knows, or is reckless as to whether, the removal or

alteration will induce, enable, facilitate or conceal an infringement of the copyright in the work or other subject-matter.

(5D) A person must not

- (a) distribute a copy of a work or other subject-matter in which copyright subsists with the intention of trading; or
- (b) import into Australia a copy of such a work or other subject-matter with the intention mentioned in paragraph (a); or
- (c) communicate to the public a copy of such a work or other subject-matter

without the permission of the owner or exclusive licensee of the copyright if any electronic rights management information attached to the copy has been removed or altered and the person:

- (d) knows that the electronic rights management information has been so removed or altered without the permission of the owner or exclusive licensee of the copyright; and
- (e) knows, or is reckless as to whether, the doing of the act referred to in paragraph (a), (b) or (c) will induce, enable, facilitate or conceal an infringement of the copyright in the work or other subject-matter.

(6AA) If:

- (a) a person contravenes subsection (1), (2) or (2A); and
- (b) the article to which the contravention relates is an infringing copy because it was made by converting a work or other subject-matter from hardcopy or analog form into a digital or other electronic machine-readable form;

the person is guilty of an offence punishable on summary conviction by a fine of not more than 850 penalty units and/or imprisonment for not more than 5 years.

(6AB) If:

- (a) a person contravenes subsection (1), (2) or (2A); and
- (b) subsection (6AA) does not apply;

the person is guilty of an offence punishable on summary conviction by a fine of not more than 550 penalty units and/or imprisonment for not more than 5 years.

(6A) A person who contravenes subsection (3), (5), (5AA), (5A), (5B), (5C) or (5D) is guilty of an offence punishable on summary conviction by a fine of not more than 550 penalty units and/or imprisonment for not more than 5 years.

Note: A corporation may be fined up to 5 times the amount of the maximum fine. See subsection 4B(3) of the *Criminal Act 1914*.

(9) In this section:

article includes a reproduction or copy of a work or other subject-matter, being a reproduction or copy in electronic form.

distribute includes distribute by way of communication.

qualified person means:

- (a) a person referred to in paragraph 47D(1)(a), 57E(1)(a) or 47F(1)(a); or
- (b) a person who is an sed officer for the purposes of section 48A, 49, 50 or 51A; or
- (c) a person authorised in writing by the Commonwealth or a State for the purposes of section 183; or
- (d) a person authorised in writing by a body administering an institution (within the meaning of Part VB) to do on behalf of the body an act that is not an infringement of copyright because of that Part.

apply means:

- (a) in relation to a circumvention device—sell the device, let it for hire, distribute it or make it available online; and
- (b) in relation to a circumvention service—provide the service.

IRISH COPYRIGHT & RELATED RIGHTS ACT 2000

140 (1) A person who, without the consent of the copyright owner-

- (a) makes for sale, rental or loan,
- (b) sells, rents or lends, or offers or exposes for sale, rental or loan,
- (c) imports into the State, otherwise than for his or her private and domestic use,
- (d) in the course of a business, trade or profession, has in his or her possession, custody or control, or makes available to the public, or
- (e) otherwise than in the course of a business, trade or profession, makes available to the public to such an extent as to prejudice the interests of the owner of the copyright,

a copy of a work which is, and which he or she knows or has reason to believe is, an infringing copy of the work, shall be guilty of an offence.

(2) In this section "loan" means a loan for reward and in particular does not include a loan to a family member or friend for private and domestic use, and "lends" shall be construed accordingly.

(3) A person who-

- (a) makes,
- (b) sells, rents or lends, or offers or exposes for sale, rental or loan,
- (c) imports into the State, or
- (d) has in his or her possession, custody or control,

an article specifically designed or adapted for making copies of a work, knowing or having reason to believe that it has been or is to be used to make infringing copies, shall be guilty of an offence.

(4) A person who-

- (a) (i) makes,
- (ii) sells, rents or lends, or offers or exposes for sale, rental or loan,
- (iii) imports into the State, or
- (iv) has in his or her possession, custody or control,

a protection-defeating device, knowing or having reason to believe that it has been or is to be used to circumvent rights protection measures, or

- (b) provides information, or offers or performs any service, intended to enable or assist a person to circumvent rights protection measures,

shall be guilty of an offence.

(5) Where copyright is infringed by-

- (a) the public performance of a literary, dramatic or musical work,
- (b) the playing or showing in public of a sound recording, artistic work, original database or film, or
- (c) broadcasting a work or including a work in a cable programme service,

the person who caused the work to be performed, played, broadcast, included in a cable programme service or shown shall be guilty of an offence where he or she knew or had reason to believe that the copyright in the work would be infringed.

- (6) An offence shall not be committed under *subsection* (1) or (5) by the undertaking of an act which under this Part may be undertaken without infringing the copyright in a work.
 - (7) A person guilty of an offence under *subsection* (1), (3) or (4) shall be liable-
 - (a) on summary conviction, to a fine not exceeding £1,500 in respect of each infringing copy, article or device, or to imprisonment for a term not exceeding 12 months, or both, or
 - (b) on conviction on indictment, to a fine not exceeding £100,000, or to imprisonment for a term not exceeding 5 years, or both.
 - (8) A person guilty of an offence under *subsection* (5) shall be liable-
 - (a) on summary conviction, to a fine not exceeding £1,500 in respect of such offence or to imprisonment for a term not exceeding 12 months, or both, or
 - (b) on conviction on indictment, to a fine not exceeding £100,000, or to imprisonment for a term not exceeding 5 years, or both.
- 141 A person who, for financial gain, makes a claim to enjoy a right under this Part which is, and which he or she knows or has false claims of reason to believe is, false, shall be guilty of an offence and shall be copyright liable on conviction on indictment to a fine not exceeding £100,000, or to imprisonment for a term not exceeding 5 years, or both.
- 142 (1) The court may on conviction of a person or being satisfied that there is a *prima facie* case to answer, where the court is satisfied that at the time of the arrest or charge the person had in proceedings his or her possession, custody or control-
- (a) in the course of a business, trade or profession, a copy of a work, knowing or having reason to believe it to be an infringing copy,
 - (b) an article specifically designed or adapted for making copies of a work, knowing or having reason to believe that it had been or was to be used to make infringing copies, or
 - (c) a protection-defeating device.
- order that the infringing copy article or device be delivered up to the copyright owner or to such other person as the court may direct.
- (2) An order may be made by the court of its own motion, or on the application of the person bringing a prosecution, and may be made whether or not the person is convicted of the offence, but shall not be made-
- (a) after the expiration of the period specified in *section* 144 (3) as being the limit of the period for delivery up, or
 - (b) where it appears to the court unlikely that any order will be made as to the disposal of the infringing copies, articles or devices.
- (3) A person to whom an infringing copy, article or device is delivered up pursuant to an order made under this section shall retain it pending the making of a final order or decision not to make an order, as the case may be.

NEW ZEALAND COPYRIGHT ACT 1994

131. Criminal liability for making or dealing with infringing objects--

- (1) Every person commits an offence against this section who, other than pursuant to a copyright licence,--
 - (a) Makes for sale or hire: or

- (b) Imports into New Zealand otherwise than for that person's private and domestic use; or
- (c) Possesses in the course of a business with a view to committing any act infringing the copyright; or
- (d) In the course of a business,—
 - (i) Offers or exposes for sale or hire; or
 - (ii) Exhibits in public; or
 - (iii) Distributes; or
- (e) In the course of a business or otherwise, sells or lets for hire; or
- (f) Distributes otherwise than in the course of a business to such an extent as to affect prejudicially the copyright owner---

an object that is, and that the person knows is, an infringing copy of a copyright work.

- (2) Every person commits an offence against this section who—
 - (a) Makes an object specifically designed or adapted for making copies of a particular copyright work; or
 - (b) Has such an object in that person's possession,knowing that the object is to be used to make infringing copies for sale or hire or for use in the course of a business.
- (3) Subject to subsection (4) of this section, every person commits an offence against this section who—
 - (a) Causes a literary, dramatic, or musical work to be performed, where that performance infringes copyright in that work; or
 - (b) Causes a sound recording or film to be played in public or shown in public, where that playing or showing infringes copyright in that sound recording or film,—knowing that copyright in the work or, as the case requires, the sound recording or film would be infringed by that performance or, as the case requires, that playing or that showing.
- (4) Nothing in subsection (3) of this section applies in respect of infringement of copyright by the reception of a broadcast or cable programme.
- (5) Every person who commits an offence against this section is liable on summary conviction,—
 - (a) In the case of an offence against subsection (1) of this section, to a fine not exceeding \$5,000 for every infringing copy to which the offence relates, but not exceeding \$50,000 in respect of the same transaction, or to imprisonment for a term not exceeding 3 months;
 - (b) In the case of an offence against subsection (2) or subsection (3) of this section, to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 3 months.
- (6) Where any person is convicted of an offence against this section in circumstances where that offence involves the making of profit or gain, that offence shall be deemed to have caused a loss of property for the purposes of section 22 (1) (b) of the Criminal Justice Act 1985, and the provisions of that Act relating to the imposition of the sentence of reparation shall apply accordingly.

CANADIAN COPYRIGHT ACT (R.S. 1985, c. C-42)

42(1) Every person who knowingly

- (a) makes for sale or rental an infringing copy of a work or other subject-matter in which copyright subsists,
- (b) sells or rents out, or by way of trade exposes or offers for sale or rental, an infringing copy of a work or other subject-matter in which copyright subsists,
- (c) distributes infringing copies of a work or other subject-matter in which copyright subsists, either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright,
- (d) by way of trade exhibits in public an infringing copy of a work or other subject-matter in which copyright subsists, or
- (e) imports for sale or rental into Canada any infringing copy of a work or other subject-matter in which copyright subsists

is guilty of an offence and liable

- (f) on summary conviction, to a fine not exceeding twenty five thousand dollars or to imprisonment for a term not exceeding six months or to both, or
- (g) on conviction on indictment, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding five years or to both

(2) Every person who knowingly

- (a) makes or possesses any plate that is specifically designed or adapted for the purpose of making infringing copies of any work or other subject-matter in which copyright subsists, or
- (b) for private profit causes to be performed in public, without the consent of the owner of the copyright, any work or other subject-matter in which copyright subsists

is guilty of an offence and liable

- (c) on summary conviction, to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding six months or to both, or
- (d) on conviction on indictment, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding five years or to both.

(3) The court before which any proceedings under this section are taken may, on conviction, order that all copies of the work or other subject-matter that appear to it to be infringing copies, or all plates in the possession of the offender predominantly used for making infringing copies, be destroyed or delivered up to the owner of the copyright or otherwise dealt with as the court may think fit.

(4) Proceedings by summary conviction in respect of an offence under this section may be instituted at any time within, but not later than, two years after the time when the offence was committed.

US COPYRIGHT LAW (Title 17 of the United States Code)

§ 506. Criminal Offenses

- (a) **Criminal Infringement.** Any person who infringes a copyright willfully either
 - (1) for purposes of commercial advantage or private financial gain, or
 - (2) by the reproduction or distribution, including by electronic means, during any 180-day period, of 1 or more copies or phonorecords of 1 or more copyrighted works, which have a total retail value of more than \$1,000,

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shall be punished as provided under section 2319 of title 18, United States Code. For purposes of this subsection, evidence of reproduction or distribution of a copyrighted work, by itself, shall not be sufficient to establish willful infringement.

- (b) **Forfeiture and Destruction.**-When any person is convicted of any violation of subsection (a), the court in its judgment of conviction shall, in addition to the penalty therein prescribed, order the forfeiture and destruction or other disposition of all infringing copies or phonorecords and all implements, devices, or equipment used in the manufacture of such infringing copies or phonorecords.
- (c) **Fraudulent Copyright Notice.**-Any person who, with fraudulent intent, places on any article a notice of copyright or words of the same purport that such person knows to be false, or who, with fraudulent intent, publicly distributes or imports for public distribution any article bearing such notice or words that such person knows to be false, shall be fined not more than \$2,500.
- (c) **Fraudulent Removal of Copyright Notice.**-Any person who, with fraudulent intent, removes or alters any notice of copyright appearing on a copy of a copyrighted work shall be fined not more than \$2,500.
- (c) **False Representation.**-Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.
- (f) **Rights of Attribution and Integrity.**-Nothing in this section applies to infringement of the rights conferred by section 106A(a).