

12 May 2003

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Panel on Commerce and Industry
Council Business Division 1
Legislative Council Secretariat
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Attn: Mr SC Tsang

Our ref MOW/DSC/P1061/00025
Doc ref 454621

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and

By email
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Dear Sirs

**DRAFT COPYRIGHT (PRESCRIPTION OF COPYRIGHT REGISTERS) REGULATION 2003
SUBMISSIONS BY INTERACTIVE DIGITAL SOFTWARE ASSOCIATION**

We act for the Interactive Digital Software Association ("IDSA"). The IDSA is the U.S. association exclusively dedicated to serving the business and public affairs needs of companies that publish video and computer games for video game consoles, personal computers, and the Internet. A list of IDSA members is attached.

We understand that the Panel on Commerce and Industry is meeting on Monday, 12 May 2002 at 4.30pm to consider, amongst other items, the Draft Copyright (Prescription of Copyright Registers) Regulation 2003. We write to convey our wish that this Regulation be approved by the Panel as the Regulation will greatly simplify providing evidence for proving copyright under S121 of the Copyright Ordinance. This will encourage more copyright owners to support criminal prosecution of offenders who deal with infringing copyright works such as counterfeit video games thereby reducing the level of piracy in Hong Kong.

Problems with the existing S121 Copyright Ordinance

The existing S121 of the Copyright Ordinance allows copyright owners to prove subsistence and ownership of copyright in legal proceedings by providing an affirmation with the relevant copyright information and exhibiting a true copy of the copyright work.

Due to the outstanding efforts of the Hong Kong Customs & Excise Department, large numbers of counterfeit game software are continually seized and persons dealing in these games are continually arrested and prosecuted. This imposes a heavy burden on IDSA members to provide sufficient copies of S121 affirmations for use in legal proceedings to prove copyright ownership and subsistence.

As illustration, between October 2002 and March 2003, IDSA members have submitted a total of 65 copies of S121 Affirmations to Hong Kong Customs for criminal prosecution of offenders under the Copyright Ordinance. These 65 Affirmations involved exhibiting a total of 158 copies of genuine game software titles.

Providing such numbers of genuine game software as exhibits demands a large amount of resources. This has prevented many IDSA members from being able to support prosecution of offenders who deal in game software infringing their copyright. For those members who attempt to rise to the challenge, it is sometimes impossible to find copies of older games which have been published for some time and are no longer in production. There is also the difficulty of locating sufficient number of game software as exhibits within the time limits imposed by the Courts given that all IDSA members need to execute affirmations their affirmations abroad and fly them to Hong Kong.

Passing of the Copyright (Prescription of Copyright Registers) Regulation would go a long way in resolving the problems set out above. It would allow more copyright owners (who previously lack the resources to provide large number of game software as exhibits to S121 affirmations) to support the criminal prosecution of copyright infringers. Administration of documents by all parties concerned would be simplified. Hong Kong Customs, backed with the support of more copyright owners providing S121 affirmations, would no doubt continue to expand on their work of pursuing copyright infringing offenders thereby reducing the level of piracy in Hong Kong.

S121 Affirmations prima facie proof of copyright ownership/subsistence

We note in passing that any concerns that Copyright Registers prescribed may not meet a high enough standard of authority or reliability is unnecessary. This is because affirmations made under S121 constitute prima facie proof of copyright only. S121(5) and (8) specifically allows a Defendant or the Court to mandate the deponent of the Affirmation to attend the Court to give evidence as to the subsistence or ownership of copyright. It is clear that S121 Affirmations do not constitute conclusive evidence of copyright ownership or subsistence. Rather, S121 is aimed to facilitate prosecutions of copyright offences by providing a route for simpler prima facie proof which can be supplemented by further oral evidence on request of Defendants or the Court.

Thank you for your kind attention on this matter.

Yours faithfully

Members of Interactive Digital Software Association

Acclaim Entertainment
Activision, Inc.
Capcom
Crave Entertainment
Disney Interactive
Eidos Interactive
Electronics Arts
Fox Interactive
Havas Interactive/Sierra On-Line, Inc.
Infogrames North America
Interplay Productions
Konami of America, Inc.
Lego Media International
LucasArts Entertainment
MGM Interactive
Microsoft Corporation
Midway Home Entertainment, Inc.
Namco Hometek, Inc.
Nintendo of America
NovaLogic, Inc.
Psygnosis
Ripcord Games
Sega of America Dreamcast, Inc.
Sony Computer Entertainment America
Take 2 Interactive
The 3DO Company
THQ, Inc.
Titus Software Corporation
Ubi Soft, Inc.
Universal Interactive Studios