

**LAW SOCIETY'S COMMENTS ON THE CONSULTATION DOCUMENT: REVIEW OF CERTAIN PROVISIONS OF COPYRIGHT ORDINANCE (DECEMBER 2004)**

**1. CHAPTER 1 COPYRIGHT EXEMPTION**

**Summary**

- 1.1 Hong Kong should retain its existing exhaustive approach to copyright exemptions, setting out the permitted acts, keeping it in line with the structure of the present Copyright Ordinance and previous legislation under which copyright law has always been practised in Hong Kong.
- 1.2 A non-exhaustive approach to copyright exemptions, based on the principles of fair use, should not be introduced in Hong Kong. To adopt such an approach would introduce a fundamental change to the system of law previously in force, create uncertainty and make it more difficult to enforce legitimate copyright interests.
- 1.3 A quantitative test should not be introduced to decide whether an act of copying for research or private study purposes is fair dealing.

**Exhaustive v Non-Exhaustive Approach**

- 1.4 As stated in paragraph 1.11 of the Consultation Document, a non-exhaustive approach to copyright exemption will result in legal uncertainty since whether an act can be regarded as fair use has to be determined on a case by case basis. The US courts have found this one of the most troublesome aspects of copyright law.
- 1.5 As regards criminal enforcement, the practical consequences of introducing a non-exhaustive model in Hong Kong would be significant. Copyright offences frequently attract imprisonment sentences so there is an incentive for the accused to put up a defence rather than plead guilty. Even though most cases are prosecuted by lay prosecutors (ie lay persons who are not qualified solicitors or barristers) and tried by magistrates who do not have any specialised knowledge of intellectual property law, the principal issues of subsistence of copyright and copying can usually readily be proved. However, by creating legal uncertainty in copyright offences, there is a greater incentive for the accused to raise an unmeritorious defence. It will be a great burden for prosecutors and magistrates to consider on a case by case basis whether an act constitutes fair use. Given the heavy case load in the courts and the fact that Hong Kong's Copyright Ordinance and related jurisprudence are based on UK case law and precedent, it is not practical to expect prosecutors and magistrates to make a determination on a case by case basis by reference to US case law.
- 1.6 Paragraph 1.9 of the Consultation Document states that some copyright work users suggested adopting the US non-exhaustive "fair use" provisions in Hong Kong if the existing scope of end-user criminal liability were to be expanded to cover categories of copyright works in addition to the four existing categories. However, any non-exhaustive

fair use approach will extend to all copyright work usage, whether civil or criminal liability is involved, so that the rights of copyright owners across the board will overall diminish.

- 1.7 Like-wise, end-users will not benefit from the introduction of such uncertain exemptions, since it will be impossible for them to know at the time they seek to use a copyright work whether such use in the particular circumstances falls under the exemption. Practically, neither copyright owner nor end-user will know with certainty unless a court determination is obtained.
- 1.8 Applying non-exhaustive fair use provisions to the use of copyright works in digital form, whether privately or over the Internet, would be fraught with difficulty. What may be fair use in a material environment and on an individual scale will not be fair use in a digital environment where multiple single copies of a digital work are easily made by the transmission, reception or viewing of the work. As presently drafted, the Copyright Ordinance is not well suited to address issues relating to the use of copyright works in digital form. The introduction of non-exhaustive fair use provisions, without amendment of the law to address the use of digital works, would further complicate the enforcement of copyright in this area.
- 1.9 It is likely that the introduction of non-exhaustive fair use provisions will exacerbate existing piracy problems. Hong Kong should promote a zero tolerance to piracy. Introducing a non-exhaustive fair use provision would clearly be a step in the wrong direction.
- 1.10 We accept that some expansion of the existing exemptions may be required to meet particular circumstances and in this regard we have no objection to the list of proposed amendments set out in Appendix II of the Consultation Document. We also ask that current exemption under Section 54 stating that copyright is not infringed by anything done for the purposes of the proceedings of the Legislative Council or judicial proceedings be extended to allow practitioners qualified under the Legal Practitioners Ordinance to make copies of works in the course of their performing professional legal services subject to any licensing scheme there may be.

#### **Quantitative test**

- 1.11 A quantitative test should not be introduced to determine if an act of copying for research or private study purposes is fair dealing. In order to determine whether copyright is infringed by copying, the quantity is secondary to the quality of the work taken. The value or significance of a copyright work may reside in a small part of the work (eg chorus of a song; one line in a play; one scene from a film). The quantity of a copyright work taken may be one factor in determining whether or not copyright is infringed, but it cannot and should not be the deciding factor.
- 1.12 The introduction of a quantitative test would be clearly unsuitable in respect of certain copyright works, in particular digital works. Take the example of software for a computer game, where a player in a driving simulation game may have the option of choosing many different tracks. The part of the computer program which allows driving on any particular track may only represent a small percentage of the entire computer program, but could be

substantial for the purposes of copyright infringement. A quantitative test which allowed the copying of a small percentage of the work as a fair dealing would not be appropriate.

- 1.13 A quantitative test would also be inapplicable in the context of copying a work over the Internet. Copyright works may be downloaded in very small quantities at a time, such as by data streaming. If a quantitative test were to be applied, such downloading might be considered fair dealing, even though the whole work was effectively copied over time.

## **CHAPTER 2 SCOPE OF CRIMINAL PROVISIONS RELATED TO END-USER PIRACY**

### **Summary**

- 2.1 The scope of end-user criminal liability should be expanded to cover all types of copyright work in addition to computer programs, movies, television dramas and musical recordings.

### **Status Quo v Expansion**

- 2.2 Under the Copyright Ordinance, copyright subsists not only in the four categories of work (computer programs, movies, television dramas and musical recordings) but in all types of work including literary, musical and artistic works, broadcasts, cable programmes and typographical arrangement of published editions. Hence all works should receive equal protection and treatment under the legislation.
- 2.3 The reference to “end-user” criminal liability is a misnomer as we are not referring to the mere possession of pirated copies by end-users in the home environment but use of the pirated copies in the commercial context and possessing them with a view to committing an act of copyright infringement.
- 2.4 The purpose of copyright protection is to prohibit people from taking advantage of other people’s efforts and to allow the normal exploitation of the works by copyright owners. The problem of piracy is not unique to the four categories of work but applies to all other copyright works in varying degrees. Criminal liability has proven to be a more effective deterrence to pirates than civil remedies.

### **3. CHAPTER 3 END-USER LIABILITY ASSOCIATED WITH PARALLEL IMPORTED COPIES**

#### **Summary**

- 3.1 Hong Kong should not relax the existing criminal and civil liability pertaining to parallel imported copies.
- 3.2 In addition, the existing period of 18 months during which both criminal and civil liability are available should not be shortened.

#### **Parallel Imports**

- 3.3 As pointed out in paragraph 3.4 of the Consultation Document, the relaxation of the existing restrictions on parallel imported copies will seriously impair the rights and interests of copyright owners and exclusive licensees.
- 3.4 With the free flow of goods, copyright owners will not be able to set up any meaningful territorial distribution or licensing network. It will no longer be possible for copyright owners to determine the first market in which and the pricing at which their works can be exploited. There can no longer be any theatrical release of movies as consumers will be able to access the latest movie online or parallel import the latest DVD at a fraction of the price.
- 3.5 The advance of technology and the Internet have also made it possible for copies to be distributed in large quantities within a very short period of time. The impact on local industries who rely on exclusive licences from overseas copyright owners can be immeasurable. If Hong Kong is allowed to be a completely free port, these local businesses will be destroyed and it can only mean a reduction of jobs and higher unemployment rate.
- 3.6 There is also the concern that pirates are using parallel imports as a disguise for pirated works, thereby causing damage to consumers and aggravating the piracy problem in Hong Kong.

#### **Is the 18-Month Period for Criminal Liability Too Long?**

- 3.7 The 18-month period for criminal liability was the result of a heated discussion between copyright owners and users of copyright works when the Copyright Ordinance was enacted back in 1997. It was after prolonged consideration that the 18-month period was determined to be appropriate to enable copyright owners to exploit their works in Hong Kong and receive legitimate revenues for their investment, while at the same time taking into account the interests of users. It is therefore undesirable and inappropriate to reconsider this period in abstract and at this juncture when the piracy problem is still so rampant.

#### **4. CHAPTER 4 DEFENCE FOR EMPLOYEES AGAINST END-USER CRIMINAL LIABILITY**

##### **Summary**

- 4.1 Hong Kong should maintain its status quo and no specific defence should be provided to employees found in possession of infringing copies provided by their employers for use in the course of their employment.
- 4.2 The proposal gives a wrong message to the public and is totally inconsistent with the commitments made by the Hong Kong Government to combat piracy in Hong Kong.

##### **Is a Specific Defence for Employees Necessary?**

- 4.3 Chapter 4 of the Consultation Document does not provide the legislative framework within which the proposed specific defence for employees in a “weak” position will operate. As mentioned in paragraph 4.3 of the Consultation Document, there are a number of loopholes in this concept of specific defence -
- a) There is no definition of an employee in a “weak” position. Given the nature of businesses in Hong Kong, it is often difficult to distinguish between an employee with managerial functions and an employee in a “weak” position. Many employees may not even have a name card, and those who have, may not have a title/position written on it.
  - b) As a result, it becomes very easy for an employer to hide behind the specific defence in order to avoid liability.
  - c) The defence does not require the employee to identify the person from whom the infringing software was obtained. There can be situations where everyone becomes an employee in a “weak” position and hence no one is responsible for purchasing and bringing into the office the pirated copies.
- 4.4 Currently, the United States, the United Kingdom, Australia and Singapore do not have any specific defence for employees along those lines as proposed by the Consultation Document. Given the serious piracy problem in Hong Kong and the “No Fakes Pledge” instigated by the Hong Kong Government, the introduction of such a specific defence will certainly send a wrong message to the world and represent a backtrack in its efforts to make Hong Kong a piracy-free city.
- 4.5 On the other hand, Section 118(3) of the current Copyright Ordinance provides that it is a defence for the person charged with an offence to prove that he did not know and had no reason to believe that the copy in question was an infringing copy of the copyright work. This defence applies to everyone. In most cases, employees, whether or not they are in a “weak” position, will be able to take advantage of this defence and avoid liability. In a small number of cases where the employees knowingly possess the infringing copies and

intend to infringe copyright, there is no reason why they should not be prosecuted. Copyright infringement, in cases where it attracts criminal liability, should not be treated differently from any other crime.

- 4.6 The Hong Kong Government should take the lead in educating the public, especially the employees, to say “NO” to piracy as they did to drugs.

#### **Whistle Blower Protection**

- 4.7 It is also important to put in place a “whistle blower” protection system whether or not there is any specific employee defence. Such protection will encourage employees to come forward with information and assist Customs and prosecution in taking action against infringers.
- 4.8 In addition, having a “whistle blower” protection system will also deter employers from purchasing or copying software for use in their offices and is a strong educational tool to be used for the Government’s “No Fake Pledge”.

**CHAPTER 5 PROOF OF INFRINGING COPIES OF COMPUTER PROGRAMS IN END-USER PIRACY CASES**  
**Summary**

- 5.1 Legislative amendments are necessary to facilitate the proof of infringement of computer programs in end-user piracy cases.

**The problem needs addressing now**

- 5.2 The existence of criminal sanctions against "end-user" piracy in the four categories of copyright works recognises that piracy in Hong Kong in respect of these categories of work is serious enough to warrant such sanctions.
- 5.3 Enforcement of copyright in respect of the use of infringing computer programs in the work place has proved very difficult. We understand that since criminal sanctions were introduced in 2001, there has been no successful prosecution in cases where the accused have pleaded not guilty. The difficulty lies in proving whether a computer program installed is an infringing copy.
- 5.4 Three years has already passed without any successful cases. We do not agree that waiting for more enforcement experience is an option if Hong Kong is to maintain its international image as a city which treats enforcement of intellectual property rights seriously.
- 5.5 The copyright owners should be encouraged to devise methods to facilitate proof in such cases (whether by registration of users or other technological means), there is no reason why legislation should not at the same time be brought in to facilitate prosecutions.
- 5.6 We agree with the court should, in proceedings of end-user piracy offence, take into account the adequacy of purchase records or other licensing terms when considering whether the concerned computer program is an infringing copy. The introduction of such a consideration need not reverse the onus of proof on the accused. Rather, the lack of adequate records may be specifically provided as a factor which the court should take into account. This is similar to the drafting under S108(2) where the court is given specific features to have regard to when considering whether additional damages should be awarded for copyright infringement.

## **CHAPTER 6 CIRCUMVENTION OF TECHNOLOGICAL MEASURES FOR COPYRIGHT PROTECTION**

### **Summary**

- 6.1 Criminal sanctions against activities under S273 of the Copyright Ordinance as set out in paragraph 6.2 in the Consultation Document should be introduced.
- 6.2 The scope of S273 should be expanded to cover devices or means designed to circumvent access control measures, and criminal sanctions should be introduced for the expanded S273.
- 6.3 Civil remedies should be available against the act of circumventing copy protection measures and access control measures, but not criminal sanctions.

### **Criminal sanctions against activities under current S273**

- 6.4 Criminalising commercial dealings in circumvention devices will help to reduce piracy in Hong Kong. Copyright piracy remains a problem in Hong Kong where counterfeit games and business software, movies and music remain readily available on the market. In order to fight such piracy, some copyright owners have implemented copy protection systems or methods aimed to prevent or restrict others from making copies of their copyright work, or otherwise to render such copies unusable.
- 6.5 However in many instances, such copy protection systems are eventually circumvented by devices that have been specifically designed to crack or overcome the copy protection system ("circumvention devices"). Circumvention devices render useless the copy protection systems or methods employed by copyright owners. It has been the experience of certain copyright owners that it is not until their copy protection systems are cracked or overcome by circumvention devices that counterfeit copies of their copyright work are on sale in Hong Kong. It is therefore clear that the demand for and hence supply of counterfeit software arises directly from the existence of circumvention devices on the market.
- 6.6 Taking civil action under the current legislation is not always useful in stopping the sales of circumvention devices. It is not uncommon for such devices to be sold at black spots in Hong Kong known for selling illegitimate goods. Such shops or sellers, who are well aware of the illegitimacy of their activities, take active steps to avoid legal actions, such as hiding the identity of their proprietors, changing their trading names after a writ is issued against them, or go into hiding for a short period of time before returning again to their business of selling circumvention devices and other pirated products.
- 6.7 Personal service of injunction orders by solicitors at such black spots (being the same black spots regularly raided by Customs & Excise for other pirated goods) is often difficult and/or dangerous. Going forward, criminal enforcement is therefore likely to be more effective in reducing the sales of such devices in Hong Kong.

6.8 Dealing in circumvention devices is already a criminal offence in many jurisdictions around the world including the UK, USA, Australia, the Netherlands, Japan, Taiwan, Malaysia, Singapore and South Korea. Introducing criminal sanctions in Hong Kong will bring Hong Kong laws in line with the laws in these jurisdictions and remove the demand (and hence supply) of counterfeit copies of certain copyright works thereby reducing Hong Kong's piracy problem. It will also help to promote the international image of Hong Kong as a jurisdiction with effective laws to protect intellectual property rights.

**S273 should be expanded to cover devices or means designed to circumvent access control measures**

6.9 As a result of cases decided under the current S273 of the Copyright Ordinance, civil liability already exists in accessing a copyright work if accessing the work involves either running the work in the RAM of a computer; or viewing it on screen.

6.10 In *Sony v Lik Sang* 58 IPR 176, the Hong Kong Court (following UK authorities) held that RAM reproduction and on screen reproduction amounts to reproduction in a material form. In other words, when a computer game is played in a game console or a computer, the following reproduction occurs:

(a) a portion of the game codes stored in the disc is reproduced in the RAM (Random Access Memory) in the console /computer; and then

(b) the codes are reproduced on screen for the user to view.

6.11 Hence playing a computer game or playing a film on screen necessarily involves copying the game or the film in question. If the original disc is an unauthorised copy, the playing of it in a game console or a computer (which necessarily involves a copy being made in RAM and on screen) is unauthorised and the resulting RAM copies and on screen copies are also unauthorised copies. Similarly, if a work is accessed without authority, the resulting copies made in RAM and on screen (if it is run on the RAM of a computer and/or on a screen) are also unauthorised copies.

6.12 If copyright owners provide access control measures designed to restrict viewing of copyright works on screen, such measures will likewise fall under the definition under the existing S273(4) of the Copyright Ordinance (being any devices or means specifically intended to prevent or restrict copying (ie on screen copying) of a work). Hence dealings in devices designed to circumvent such measures must similarly attract civil liability under current the S273.

6.13 Since access control measures already appear to be protected under the current law for those copyright works which are viewed on screen or processed in the RAM of a computer, there appears to be no logical reason why access control measures for other kinds of copyright works (the accessing of which does not involve RAM copying or on screen copying) should not enjoy the same protection.

- 6.14 Further, it cannot be denied that the global trend is for copyright works to be distributed and enjoyed in a digital format, predominantly over the internet. Access control is the key to protection of copyright works in digital form.
- 6.15 Paragraph 6.5 of the Consultation Document suggests that it is more important to protect the copyright of a work rather than the technology or devices employed to protect the copyright of the work. However, the technology designed to protect copyright works should be afforded similar protection since once the technology employed to protect a work is circumvented, the same technology will no longer be effective to protect other copyright works and all existing copyright works protected under the technology will be open to infringement.
- 6.16 Since protection of access control technology is premised on the basis that it is used to protect copyright works, we agree with the principles set out in paragraph 6.6 of the Consultation Document that liability should be only be imposed where the person in question knows that the circumvention device will be used to circumvent an access control measure for the purpose of committing an act of copyright infringement (similar to the existing S273).
- 6.17 We further propose that liability should not be imposed only where there is a commercial advantage involved. It is not unusual for hackers to distribute for free their circumvention devices or methods on the internet. If liability is imposed only where the person in question knows the device will be used to circumvent a copy protection system or an access control measure for the purpose of committing an infringing act, there is no reason why liability should be imposed only if there is a commercial advantage involved.
- 6.18 To include incorporate access control measures in existing S273, we propose the new S273 to read as follows (additions in bold):

Section 273

(1) This section applies where-

- (c) copies of a copyright work are issued or made available to the public; or
- (d) an unfixed performance is made available to the public or copies of a fixation of a performance are issued or made available to the public,

by or with the licence of the copyright owner, the performer or the person having fixation rights in relation to the performance, as may be appropriate, in any form which is copy-protected **or protected by access control measure.**

(2) The person issuing or making available the copies or the unfixed performance to the public has the same rights and remedies against a person who, knowing or having reason to believe that it will be used to make infringing copies or infringing fixations-

- (a) makes, imports, exports, sells or lets for hire, offers or exposes for sale or hire, advertises for sale or hire, or possesses for the purpose of, in the course of, or in

connection with, any trade or business, **or makes available to the public whether for any commercial advantage or not** any device or means or **computer program** specifically designed or adapted to circumvent the form of copy-protection **or access-control measure** employed or

- (b) publishes **or makes available** information **or computer program** intended to enable or assist persons to circumvent that form of copy-protection **or access control measure**

as a copyright owner has in respect of an infringement of copyright.

(3) Further, the person issuing or making available the copies or the unfixed performance to the public has the same rights and remedies under section 109 (delivery up) in relation to any such device or means **or computer program** which a person has in his possession, custody or control with the intention that it should be used to make infringing copies of copyright works or infringing fixations of performances **or access to any copyright work without the licence of the copyright owner**, as a copyright owner has in relation to an infringing copy.

(4) References in this section to copy-protection include any device or means or **computer program** specifically intended to prevent or restrict copying of a work or fixation of a performance or to impair the quality of copies or fixations made.

**(4A) References in this section to access-control measure include any device or means or computer program specifically intended to prevent access to a copyright work without the licence of the copyright owner**

(5) Sections 115 to 117 (presumptions as to certain matters relating to copyright) apply in relation to proceedings under this section as they do in relation to proceedings under Part II (copyright), and section 111 applies, with the necessary modifications, in relation to the disposal of anything delivered up by virtue of subsection (3).

(6) It is immaterial for the purpose of subsection (2)(a) whether or not the trade or business consists of dealing in devices or means or **computer program** specifically designed or adapted to circumvent forms of copy-protection **or access control measure**.

(7) In subsection (6), "dealing in" includes buying, selling, letting for hire, importing, exporting and distributing.

#### **Civil remedies available against the act of circumventing copy protection measures and access control measures**

- 6.19 Liability should not only be imposed against persons who deal in circumvention devices. Persons engaged in the act of circumvention itself should be liable for their acts, in the same way that persons who are engaged in the act of infringing copying are liable as well as those who subsequently deal in the infringing copies. Copyright owners should have a right of action against those who engage in the act of circumvention (ie end users).

- 6.20 We recognise that imposing criminal liability may be considered by some to be too harsh in the present environment. We therefore consider it appropriate to introduce civil liability for end users. This will give copyright owners the option of issuing civil proceedings against such persons if they so wish.

## **7. CHAPTER 7 RENTAL RIGHTS FOR FILMS**

### **Summary**

- 7.1 Hong Kong should provide rental rights for copyright owners of films.
- 7.2 Unless there are exceptional circumstances, rental rights should not attract criminal sanctions.

### **Rental Rights**

- 7.3 It is observed that the Hong Kong film industry has been hard hit by the rampant level of infringement. Although bootlegging of films has been substantially reduced following the introduction of an offence for unauthorised possession of video recording equipment in a place of public entertainment (such as a cinema), and the diligent patrolling by cinema operators during film screening, the volume of pirated VCDs and DVDs remains high.
- 7.4 Although many pirated versions appear in the market early than the genuine copies, it appears that some rental shops provide pirated copies which they copy from genuine copies to their customers as rental copies and these rental copies do not have to be returned.
- 7.5 It is also observed that to compete with pirated copies, the price of genuine film derivatives, namely VCDs and DVDs, have come down substantially since the mid-1990s and the time lapse between the theatrical release and marketing of VCDs and DVDs has been significantly shortened. Further, given the growing number of consumers who prefer to watch films in their own homes, income from VCDs and DVDs has become an important source of income for film owners and investors. "Unauthorised" rental erodes such income source.
- 7.6 Given the Government's determination and intention to develop cultural and creative industries in Hong Kong, we agree that rental rights should be extended to films.
- 7.7 Rental shops should be allowed to continue their rental operations provided that the products they are offering are genuine copies until a licensing scheme is introduced by the film copyright owners.

### **Civil and not Criminal Sanction**

- 7.8 Currently in Hong Kong, active licensing schemes include:-
- a) public performance and broadcasting of musical and literary (accompanying lyrics) administered by the Composers & Authors Society of Hong Kong Limited;
  - b) public performance and broadcasting of sound recordings administered by the Phonographic Performance (South East Asia) Limited;
  - c) photocopying of literary works administered by the Hong Kong Reprographic Rights Society Limited;
  - d) photocopying of newspaper articles administered by the Hong Kong Copyright Licensing Association Limited.

- 7.9 None of the licensing schemes are backed by criminal sanction. Neither does the existing rental rights for computer programs and sound recordings extend criminal liability.
- 7.10 Hence, unless there are exceptional circumstances, such as extreme hardship or impracticality on film copyright owners to enforce their rights or schemes, rental rights should confer only civil rights on film copyright owners.

## **8. CHAPTER 8 ISSUES RELATING TO THE WORLD INTELLECTUAL PROPERTY ORGANIZATION INTERNET TREATIES**

### **Summary**

- 8.1 It is not only desirable but necessary for Hong Kong to keep pace with international developments in intellectual property protection since Hong Kong takes pride as one of Asian, if not one of the world's, leaders in intellectual property recognition and protection. This is also important to maintain Hong Kong's image as an international city.
- 8.2 In order to encourage creativity, in particular to breed local creative talents, Hong Kong should not fall behind in recognising new rights which are granted in the intellectual property regime outside Hong Kong. Rental rights should therefore also be extended to authors of underlying works in phonograms.
- 8.3 Performers should be granted moral rights with regard to their live aural performances or performances fixed in phonograms. Performers should also be granted rental rights over their performances fixed in phonograms.
- 8.4 The above rental rights should extend beyond phonograms and should include films if rental rights are granted to film copyright owners.
- 8.5 In granting moral rights, we agree it is important to provide for consent and waiver.
- 8.6 Our copyright law and relevant definitions should be revised to properly reflect the extension of rights.

### **Commercial Rental Rights**

- 8.7 We take the view that it is only fair that all parties who contribute towards the commercial success of a work, particularly a derivative work such as films and sound recordings, should enjoy the fruits of success.
- 8.8 Although theoretically, the new or extended rights will mean that those granted the rights may expect and demand payment in return for licensing of their rights, we believe the commercial impact is not substantial given that in reality, to a very large extent, such rights are granted in a package when the work is licensed for exploitation and is dealt with by way of contract between the relevant parties. Yet, authors and performers would be given additional recognition and encouragement if their further rights are recognised by law.
- 8.9 Further, performers should not be treated less favourably than other authors of copyright works as their skills in interpretation and performance are also integral to the success of a work.

### **Moral rights**

- 8.10 Whilst it is fair that moral rights should be granted to performers, it is important to allow for consent and waiver of rights to ensure that the exploitation of a work will not be unnecessarily hampered by a performer, especially if there are many performers such as in a film, who may act unreasonably in exercising his/her moral rights.

**Definitions**

- 8.11 We agree that the definitions of “performer” and “performance” should be suitably amended to reflect the work the Ordinance intends to cover and protect.

The Law Society of Hong Kong  
Intellectual Property Law Committee

**15 February 2005**

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