

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2004 SPECIAL 301 REPORT

SPECIAL MENTION

HONG KONG

The publishing industry reports good cooperation from the Hong Kong Customs & Excise Bureau in obtaining raids in conjunction with copyright holders. Indeed, government authorities have put forward legislation that should prove helpful in combating illegal activities undertaken by photocopy shops [Copyright (Amendment) Bill 2003, Section 118(C)]. While Section 118(C) should provide many helpful tools in the fight against illegal activities in photocopy shops, AAP reports that only about 50% of illegal photocopying in Hong Kong is undertaken in these types of shops. Thus, AAP members remain extremely concerned about Section 118(A) of the same bill, which categorically excludes printed materials from a provision calling for criminal liability for those who use illegal copies in the course of a trade or business. This discrimination against a particular category of copyrighted works, inconsistent with Hong Kong's obligations under Article 61 of TRIPS, deals a severe blow to a subset of copyright owners left to defend themselves against the 50% of illegal users who are not making use of photocopy shops. It is vital that the Hong Kong government lift the current suspension of Section 118(A) as to printed materials and abort proposals for legislation calling for permanent exclusion of such works. Likewise, the Hong Kong government should correct the deficient provision in Section 118(C) and pass that provision at the next appropriate interval.

The entertainment software industry appreciates the Hong Kong government's increased efforts against pirate video game retailers and anticipates seeing equally aggressive initiatives aimed at upstream sources of pirate product, including importers, exporters and local CD-burning operations. However, the industry remains concerned with the recent but significant increase in the number of counterfeit cartridge-based games being exported from the territory to the U.S. and Europe. Hong Kong is being used as an operations base by pirates and counterfeiters operating out of China; these pirates establish an "office" in the territory that merely receives purchase orders and facilitates delivery of counterfeit products. The Customs Authority must strengthen its inspection procedures to impede the flow of counterfeit goods both into and out of Hong Kong, and is likewise urged to initiate cooperative efforts with its counterparts on the Chinese mainland to better address syndicate operations involved in shipping counterfeit cartridge-based goods between Hong Kong and China.

Entertainment software companies must also contend with the burdensome evidentiary requirements for prosecuting copyright offenses, having to spend excessive efforts and resources to bring a copyright infringement case. Under Hong Kong procedure, the copyright holder must provide §121 affirmations for every copyright infringement prosecution, which includes providing evidence of copyright ownership, as well as attaching genuine copies of the video game titles that are the subject of the case. In certain cases, copies of as many as 200 different pirate video game titles have been seized. The burden of collecting the copyright information as well as providing legitimate copies of all these titles is both time consuming and very expensive for U.S. publishers—

who often have to obtain and ship the necessary information from the U.S. The situation remains unresolved due to the government's delay in using its powers under existing legislation to designate foreign copyright registries (including the U.S. Copyright Office) under §121. Recognizing U.S. copyright registration certificates and allowing their substitution for copies of the genuine article would greatly reduce the burden on copyright owners and expedite their compliance with the affirmation requirements. Despite long-standing representations that this simple technical requirement would be addressed, this has yet to occur.