

# Hong Kong's Amended Copyright Law

Guidance Note on Prevention of End-User Piracy in Business

A dark silhouette of a person standing and holding a tablet or laptop. The person is positioned on the left side of the page, facing right. The background features a green and yellow color scheme with a grid pattern and a globe.

## Intellectual Property

- \* Corporate Accountability
- \* Responsible Governance

Commerce and Economic Development Bureau  
Intellectual Property Department

Revised Edition 2010

The material in this publication does not constitute legal advice and the Government of the Hong Kong Special Administrative Region does not accept any liability for any loss or damage caused to any person relying on any information or omission in the publication.

Published by the Commerce and Economic Development Bureau  
and Intellectual Property Department

February 2010

© Hong Kong Special Administrative Region Government 2010

**All rights reserved**

This publication may be copied, distributed or exhibited in any form for non-commercial use without the prior permission of the Government of the Hong Kong Special Administrative Region provided that the following notice appears in the works:

This material is taken from "Hong Kong's Amended Copyright Law - Guidance Note on Prevention of End-User Piracy in Business" © 2010 and is used with the permission of the Government of the Hong Kong Special Administrative Region.

# **Hong Kong's Amended Copyright Law**

**Guidance Note on Prevention of End-User Piracy in Business**

Commerce and Economic Development Bureau  
Intellectual Property Department

# Content

## Introduction

Page 1

## (I) What is “Business End-user Piracy”?

Page 2

## (II) The Numeric Limits prescribed for the Copying and Distribution Offence

Page 4

## (III) What are the Responsibilities of Directors/Partners of a Business in guarding against Piracy?

Page 10

## (IV) Good Practices Guide

Page 12

# Introduction

To prevent the use of pirated copies in business and in the interest of promoting corporate accountability and responsible governance, the *Copyright (Amendment) Ordinance 2007*<sup>1</sup> imposes certain responsibilities on directors, partners and persons who are responsible for the internal management of their organisations.

For the purpose of this Guidance Note, the terms “business(es)” and “business end-user(s)” are not restricted to business proprietors or enterprises. They broadly cover organisations or bodies (whether profit-making or not), including but not limited to companies, partnerships, educational establishments, training institutions, clubs, societies and trade unions.

Not only does proper management of copyright assets (including but not limited to publications and software) improve productivity and enhance system security; it also helps prevent inadvertent piracy in business. This Guidance Note serves to help businesses better manage their copyright assets and guard against inadvertent end-user piracy.

## This Guidance Note outlines –

- i. the types of business end-user piracy which may attract criminal liability under the *Copyright Ordinance*;
- ii. the responsibilities of directors/partners of a business; and
- iii. some suggested good practices that organisations and their senior management may adopt to help guard against business end-user piracy.

***Please note that the content of this Guidance Note is provided for reference only. Compliance with this guide should not be taken as automatically exempting an organisation or its senior management from all liabilities in relation to business end-user piracy activities. Readers are encouraged to seek independent legal advice if in doubt.***

<sup>1</sup> The Ordinance was gazetted on 6 July 2007 (No. 27 Vol. 11 Legal Supplement 1) and is available at the website of the Government Logistics Department (<http://www.gld.gov.hk/cgi-bin/gld/egazette/index.cgi?lang=e&agree=1>).

# (I) What is “Business End-user Piracy”?

The use of infringing materials by business end-users may attract legal (civil and/or criminal) liabilities. Specifically, there are two types of criminal offences pertaining to business end-user piracy under the *Copyright Ordinance* –

Offence	(1) Possession offence -	(2) Copying and distribution offence -
	without the copyright owner’s authorisation, possessing an infringing copy of any of the following 4 types of works for use in business	without the copyright owner’s authorisation, doing the following acts for the purpose of or in the course of any trade or business on a regular or frequent basis to an extent beyond the <i>prescribed numeric limits</i> (see Part (II) below), resulting in a financial loss to the copyright owners -  (i) making an infringing copy of a copyright work in any of the following 4 types of publications for distribution <sup>2</sup> ; or  (ii) distributing <sup>2</sup> an infringing copy of a copyright work in any of the following 4 types of publications
<b>Applicable types of works or publications</b>	<ul style="list-style-type: none"> <li>• Software</li> <li>• Movies</li> <li>• Television dramas</li> <li>• Musical (sound or visual) recordings</li> </ul>	<ul style="list-style-type: none"> <li>• Books (including comic books)</li> <li>• Newspapers</li> <li>• Magazines</li> <li>• Periodicals</li> </ul> <i>in printed form</i> <sup>3</sup>

<sup>2</sup> The copying and distribution offence applies to distribution of infringing copies by electronic means (e.g. email or fax), in addition to the distribution of hard copies.

The offence will not apply to distribution through an Intranet or other private network of an organisation for the time being. The Administration will further consult the stakeholders about the numeric limits applicable to Intranet distribution, having regard to the availability of appropriate licensing schemes covering such distribution before extending the coverage of the offence to the Intranet.

Distribution of infringing copies through the Internet is not covered by the copying and distribution offence. Please note, however, that distribution of infringing copies (irrespective of the types of copyright works and the distribution media) to such an extent as to affect prejudicially the copyright owner(s) is already subject to criminal sanction under section 118(1)(g) of the *Copyright Ordinance*.

<sup>3</sup> The copying and distribution offence does not apply to non-printed works such as e-book, website contents etc.

<b>Coverage of the offence</b>	The offence applies to all business end-users.	The offence applies to all business end-users <u>except</u> non-profit making educational establishments. (Educational establishments may however still incur civil liability, subject to certain acts permitted by the <i>Copyright Ordinance</i> .)
<b>Maximum penalty</b>	<ul style="list-style-type: none"> <li>◆ 4 years' imprisonment; and</li> <li>◆ a fine of HK\$50,000 per infringing copy</li> </ul>	
<b>Effective date</b>	Already in force	To come into effect on a date to be appointed. <i>(Note: the Administration intends to bring this offence into force in the 2nd half of 2010)</i>
<b>Examples</b>	<ul style="list-style-type: none"> <li>• Possession of pirated software for use in business</li> <li>• Use of pirated musical CDs/karaoke discs/MP3s for entertaining customers in shop/restaurant/karaoke establishments</li> </ul>	<ul style="list-style-type: none"> <li>• Making a large number of photocopies of newspaper articles on a daily basis for reference by managers of a company without proper licence</li> <li>• Distributing a large number of photocopies made from books to participants in weekly seminars or in-house training sessions without proper licence</li> </ul>



## (II) The Numeric Limits prescribed for the Copying and Distribution Offence

There are two separate sets of numeric limits<sup>4</sup> applicable to different categories of copyright works within which the copying and distribution offence does not apply. These numeric limits are as follows -

### (a) Numeric limit for newspapers, magazines or periodicals (other than academic journals)

The number of "infringing pages" (i.e. those pages each containing in whole or in part any infringing copy) made for distribution or distributed within **any 14-day period must not exceed 500** (calculated on the basis of A4-size pages).

### (b) Numeric limit for books or academic journals

The total value of infringing copies made for distribution or distributed **within any period of 180 days must not exceed HK\$6,000** based on the following evaluation methods -

- (i) where the infringing copies contain more than 25% of the total number of printed pages of a book or an issue of an academic journal, the value of such infringing copies is taken to be the same as the relevant book or the relevant issue of the academic journal; and
- (ii) where the infringing copies contain not more than 25% of the total number of printed pages of an issue of an academic journal but include one or more than one complete article(s) of that issue, the value of such infringing copies is taken to be the same as the relevant article(s).

## Related Questions & Illustrations

### (a) Numeric limit for newspapers, magazines or periodicals (other than academic journals)

**Q1: What if I reduce/enlarge the size of the original image when making photocopies of news articles, and/or use photocopying papers which are larger/smaller than A4-size?**

**A1:** When determining the number of "infringing pages" made or distributed, the degree of reduction/enlargement of the image and the size of the paper used will be taken into account. In terms of calculating the total number of "infringing pages", there is neither advantage nor downside for adjusting the size of the original image or using photocopying papers larger/smaller than A4-sizes (see the illustrations in scenario (ii) + (iii) + (iv) in Example A below).

<sup>4</sup> For more details, please refer to the *Copyright (Amendment) Ordinance 2009* (Ordinance No.15 of 2009) gazetted on 27 November 2009 (No. 48 Vol. 13 Legal Supplement I) which is available at the website of the Government Logistics Department (<http://www.gld.gov.hk/cgi-bin/gld/egazette/index.cgi?lang=e&agree=1>).

## Example A

On a regular basis, Organisation X makes and distributes copies of clippings from newspapers and magazines to each of its employees for reference without obtaining proper licence from the relevant copyright owners. There are altogether 10 employees. The scenarios below illustrate the operation of the numeric limit for newspapers/magazines/periodicals -

Scenarios	No. of “infringing pages” made/ distributed to each employee within a 14-day period	Size of each “infringing page”	Enlargement/ reduction of the original image of each copyright work	Total no. of “infringing pages” made/distributed
i.	50 (pages)	A4-size	Nil	$50 \text{ (pages)} \times 10 \text{ (sets)}$ $= \underline{500 \text{ pages}}$ (Within the numeric limit <sup>5</sup> )
ii.	50 (pages)	A4-size	Reduced by 30% (i.e. 70% of the original image size)	$50 \text{ (pages)} \times 100/70 \text{ (adjust for image size)} \times 10 \text{ (sets)}$ $= \underline{714.28 \text{ pages (to 2 decimal places without rounding off}^6)}$ (Numeric limit exceeded)
iii.	50 (pages)	A3-size (to be treated as double of A4-size)	Nil	$50 \text{ (pages)} \times 2 \text{ (adjust for paper size)} \times 10 \text{ (sets)}$ $= \underline{1,000 \text{ pages}}$ (Numeric limit exceeded)
iv.	50 (pages)	A5-size (to be treated as half of A4-size)	Enlarged by 75% (i.e. 175% of the original image size)	$50 \text{ (pages)} \times 1/2 \text{ (adjust for paper size)} \times 100/175 \text{ (adjust for image size)} \times 10 \text{ (sets)}$ $= \underline{142.85 \text{ pages (to 2 decimal places without rounding off}^6)}$ (Within the numeric limit <sup>5</sup> )

<sup>5</sup> Even if the extent of making or distribution of infringing copies in a particular case is within the relevant numeric limits which makes the copying and distribution offence inapplicable, the business end-user concerned may still be subject to civil plus other criminal liabilities (such as the offence on “prejudicial distribution” referred to in footnote 2 above) under the *Copyright Ordinance*.

<sup>6</sup> See Section 5(3) of Schedule 1AA of the *Copyright Ordinance* as added to the Ordinance by Section 4 of the *Copyright (Amendment) Ordinance 2009*.

## Q2: What if some or all of the infringing copies are made in electronic form or distributed by electronic means such as emails?

A2: The method for determining the number of “infringing pages” made in electronic form or distributed by electronic means is similar to that for hard copies. The infringing copies in the electronic files will first be printed on A4-size papers, and each printed page will then be counted as an “infringing page”. If there is any enlargement or reduction in the image size of the original work(s), appropriate adjustment to the image size will be made as in the case of hard copies illustrated in scenario (ii) + (iv) in Example A above.

### (b) Numeric limit for books or academic journals

The following scenarios illustrate how the value of the infringing copies made from books or academic journals is to be calculated.

#### Example B

Company Y frequently makes and distributes copies from books and/or academic journals to its 20 employees for reference without obtaining proper licence from the relevant copyright owners.

Scenarios	Total no. of printed pages of the book/issue of academic journal	No. of printed pages copied/ distributed to each employee within a 180-day period	Value of the book, issue of the academic journal or article in the issue of the academic journal (HK\$)	Value of infringing copies (HK\$)
i. Copies made from a book	100 (pages)	10 (pages) (i.e. less than 25% of the total no. of book pages)	HK\$200 (the marked retail price of the book <sup>7</sup> )	Nil (Within the numeric limit <sup>5</sup> )
ii. Copies made from a book	100 (pages)	50 (pages) (i.e. more than 25% of the total no. of book pages)	HK\$200 (the marked retail price of the book <sup>7</sup> )	HK\$200 × 20 (sets) = <u>HK\$4,000</u>  (Within the numeric limit <sup>5</sup> )
iii. Copies made from a book of a 4-volume set, no price set for individual volume	100 (pages) (each volume contains 100 pages, i.e. 400 pages in total for the 4-volume set)	50 (pages) (i.e. more than 25% of the total no. of pages in a volume)	HK\$2,000 (the marked retail price of the entire set <sup>7</sup> )  Value of the book is : HK\$2,000 × 1/4 = HK\$500	HK\$ 500 × 20 (sets) = <u>HK\$10,000</u>  (Numeric limit exceeded)

<sup>7</sup> The “marked retail price” of a book, a multi-volume book set or an issue of an academic journal refers to its retail price printed in or on it by the publisher. See also Q3, Q4 and Q5 below for further explanations.

iv. Copies containing <u>no</u> complete article made from an issue of an academic journal	100 (pages)	10 (pages) (i.e. less than 25% of the total no. of journal pages)	HK\$500 (the marked retail price of the issue of the journal <sup>7</sup> )	Nil  (Within the numeric limit <sup>5</sup> )
v. Copies containing one complete article made from an issue of an academic journal	100 (pages)	10 (pages) (i.e. less than 25% of the total no. of journal pages)	HK\$200 (the recommended retail price of the article <sup>8</sup> )	HK\$200 × 20 (sets) = <u>HK\$4,000</u>  (Within the numeric limit <sup>5</sup> )
vi. Copies with or without any complete article made from an issue of an academic journal	100 (pages)	50 (pages) (i.e. more than 25% of the total no. of journal pages)	HK\$500 (the marked retail price of the issue of the journal <sup>7</sup> )	HK\$500 × 20 (sets) = <u>HK\$10,000</u>  (Numeric limit exceeded)
vii. A combination of scenarios (i), (ii) and (vi)	(1) Book A: 100 (pages)  (2) Book B: 100 (pages)  (3) Academic Journal: 100 (pages)	(1) 10 (pages) (i.e. less than 25% of the total no. of book pages)  (2) 50 (pages) (i.e. more than 25% of the total no. of book pages)  (3) 50 (pages) (i.e. more than 25% of the total no. of journal pages)	(1) HK\$200 (the marked retail price of the book <sup>7</sup> )  (2) HK\$200 (the marked retail price of the book <sup>7</sup> )  (3) HK\$500 (the marked retail price of the issue of the journal <sup>7</sup> )	(1) HK\$0 +  (2) HK\$200 × 20 (sets) +  (3) HK\$500 × 20 (sets) = <u>HK\$14,000</u> (in total)  (Numeric limit exceeded)

<sup>8</sup> The recommended retail price of an article in an issue of an academic journal is its retail price recommended by the publisher before any discount is given.

**Q3: How do I calculate the value of the infringing copy if the book/issue of the journal in question has no marked retail price?**

A3: In such circumstances, the value of the infringing copies should be calculated according to the following methods –

- (a) For books
  - (i) its retail price (sometimes known as list price) as recommended by the publisher before any discount is given (such information could usually be found on major online bookshops); or
  - (ii) (if no such recommended price is available) the readily ascertainable market value of the book.
- (b) For issues of academic journals
  - (i) the marked subscription price of the journal as printed in or on its issue divided by the number of issues covered by the subscription; or
  - (ii) (if no such marked subscription price is available) the subscription price recommended by the publisher before any discount is given divided by the number of issues covered by the subscription.

**Q4: How do I determine the value of the infringing copy where the marked retail price of a book (or marked retail/subscription price of an issue of an academic journal) is denominated in more than one currencies?**

A4: The marked price in Hong Kong dollar will be adopted, if available. Otherwise the value in Hong Kong dollar shall be calculated by reference to the value in other currencies printed in or on the book/issue of the journal in the following order -

- (i) US dollars;
- (ii) the first foreign currency being printed in or on the book/journal

**Q5: What is the applicable exchange rate in converting foreign currencies into Hong Kong dollar value?**

A5: The exchange rate at the time when the infringing copies are made/distributed will be relevant, and reference is to be made to -

- (i) the opening indicative counter exchange selling rate published by The Hong Kong Association of Banks in respect of that foreign currency; or
- (ii) (if no such rate is published) the representative exchange rate published by the International Monetary Fund in respect of that foreign currency<sup>9</sup>.

<sup>9</sup> See Section 2 of Schedule 1AA of the *Copyright Ordinance* as added to the Ordinance by Section 4 of the *Copyright (Amendment) Ordinance 2009*.

In a nutshell, unauthorised copying and distribution activities conducted by a business end-user frequently or regularly involving the following quantity or value of infringing materials will run the risk of being prosecuted for the copying and distribution offence -

- (a) For newspapers/magazines/periodicals (other than academic journals)
  - within any 14-day period;
  - the total number of "infringing pages" made/distributed exceeds 500 (calculated on the basis that each "infringing page" is in A4-size and there being no reduction/enlargement of the original image of the copyright works throughout the copying process).
- (b) For books/academic journals
  - within any 180-day period;
  - the infringing copies made/distributed contain more than 25% of the printed pages of a book/an issue of an academic journal;
  - the infringing copies made/distributed contain not more than 25% of the printed pages of an issue of an academic journal, but contain one or more complete article(s) of that issue;
  - the total value of the relevant book(s)/academic journal(s)/article(s) exceeds HK\$6,000.

Please note also that the respective numeric limits for newspapers/magazines/periodicals (other than academic journals) and for books/academic journals operate independently of each other. In other words, regular or frequent copying/distribution of infringing copies of works from different kinds of publications to such an extent that exceeds only one of the prescribed numeric limits is sufficient to be caught by the copying and distribution offence.

### (III) What are the Responsibilities of Directors/Partners of a Business in guarding against Piracy?

Directors/partners may be subject to criminal liability if their bodies corporate/partnerships have done an infringing act stated in Part (I) above that attracts business end-user criminal liability. Hence, directors/partners are well advised to take prudent steps to guard against business end-user piracy activities.

#### Who would be liable?

The directors'/partners' liability provision applies to –

- Company directors or partners who are responsible for the internal management of their organisations; or
- If there is no such director or partner, the person who is responsible, under the immediate authority of the director(s)/partner(s), for the internal management of the body corporate or partnership at the time when the infringing act is done.

The above personnel should be regarded as having the overall responsibility for managing the use of copyright works in business even if they delegate the matters to other staff. Hence they should maintain supervision even where delegation is made.

#### What defences are available to a director/partner charged with the offence?

When a director, partner or any other person responsible for the internal management of the organisation is charged with any of the aforesaid offences under the *Copyright Ordinance*, he or she may defend himself or herself by putting forward **sufficient evidence** to show that he or she did not authorise the infringing act.

Evidence that could convince the court of either of the following matters would be taken as “sufficient evidence” -

- the defendant has caused the body corporate or partnership to set aside financial resources and has directed the use of the resources for buying a sufficient number

of genuine copies of the copyright work involved or appropriate licences for use by the organisation; or

- the organisation has actually incurred the expenditure for buying a sufficient number of genuine copies of the copyright work involved or appropriate licences for use by the organisation.

In addition, the court may take other relevant factors into account, such as –

- whether the defendant has introduced policies or practices against the use, making or distribution of infringing copies of copyright in his or her organisation; and
- whether the defendant has taken action to prevent the use, making or distribution of infringing copies of copyright works in his or her organisation.

After a director, partner or person responsible for internal management of the business has put forward “sufficient evidence” to the court’s satisfaction, the burden will be on the prosecution to prove the contrary, i.e. the director/partner/person has authorised the concerned infringing act. If the prosecution fails to prove this beyond reasonable doubt, the director/partner/person would be acquitted of the criminal charge.



## (IV) Good Practices Guide

This part suggests good practices that a director/partner may adopt for the purpose of guarding against business end-user piracy. Evidence of prudent steps and reasonable efforts having been taken to guard against business end-user piracy would be useful evidence to show that the director/partner concerned does not authorise business end-user piracy activities.

### (A) General Guidelines

#### Business Policy & Staff Awareness

The director, partner or any other person responsible for internal management of the business (“the responsible personnel”) should set out clearly the business’s policy –

- on the proper use of legitimate software, including their installation, use and disposal;
- against unauthorised<sup>10</sup> making and distribution of copies of copyright works published in a book, newspaper, magazine or periodical; and
- on the use of non-infringing copies of movies, television dramas, musical sound recordings and musical visual recordings.

The policy should be properly documented and made known to all employees, including new recruits. The responsible personnel should ensure that the policy is brought to the attention of all employees periodically. The employees may also be asked to signify their understanding of the policy by signing a copy of the policy, which should be retained. In devising the policy, reference may be made to the template on “Compliance with the Copyright Ordinance – Guides for Business Organisations” posted on the website of the Intellectual Property Department ([http://www.ipd.gov.hk/eng/intellectual\\_property/copyright/compliance\\_Guide\\_for\\_business.htm](http://www.ipd.gov.hk/eng/intellectual_property/copyright/compliance_Guide_for_business.htm)).

---

<sup>10</sup> “Unauthorised” means “without the authorisation of the relevant copyright owners, or acting in contravention of or beyond the scope of the terms of the licences for copying/distribution”.

## Record-keeping

Records of purchases of genuine copies or appropriate licences would be useful for the following purposes –

- to keep track of whether the copies in use in business are genuine or properly licensed; and
- to evidence that expenditure has been incurred for purchasing genuine copies or appropriate licence (see “sufficient evidence” under Part (III) above).

Type(s) of copyright works	Records to be retained
Software	<ul style="list-style-type: none"><li>• all records of purchases of software in use (such as receipts and invoices), the respective software licences, and the original copies of software</li><li>• an accurate and updated inventory or software register for all installed software, with installations of all the software in specific computers accurately registered</li></ul>
Copyright works published in books, newspapers, magazines or periodicals	<ul style="list-style-type: none"><li>• all records of purchases/subscriptions of the copyright works and/or appropriate licences</li><li>• an accurate inventory or register for all purchased publications;</li><li>• a record of the copying and distribution activities that have been carried out in relation to published copyright works</li></ul>
Movies, television dramas, musical sound recordings or musical visual recordings	<ul style="list-style-type: none"><li>• all records of purchases and an inventory of the purchased copies</li></ul>

## Checking

To find out if infringing copies are being used in business inadvertently, the responsible personnel should conduct periodic (announced and/or unannounced) checks. The checking should seek to identify discrepancies between (a) the inventory and copies of copyright work actually in use, and (b) the terms of the relevant licences and the actual use of the copyright works. Where infringing copies are discovered, staff should immediately stop using the infringing copies. Remedial action, including purchase of the required genuine copies or acquisition of the appropriate licences, should be taken immediately. Results of the checking and the remedial action taken (if applicable) should be reported to management and recorded.

## Monitoring the Usage Requirements for Copyright Works and Keeping Records of Procurement

Records of procurement taken together with records showing that the usage requirements for copyright works within the organisation are being monitored would be useful evidence to show that the organisation has bought sufficient number of genuine copies of the copyright work or acquired appropriate licences for use by the organisation.

The responsible personnel should conduct regular reviews covering the current and forecast needs of the business in the use of copyright works (such as software and publications). Such needs should be compared with the existing inventory/software register. Where it is decided that additional copies/licences are or will be needed for use in business, the responsible personnel should –

- direct the setting aside of financial resources (and use of the resources) for buying the required copies/licences;
- document the budget and the directions given; and
- record all the purchases properly, with invoices or sales receipts retained as proof of the expenditure incurred.

## (B) Software

The guidelines below apply specifically to the use of **software** in business.

It is advisable for the responsible personnel to appoint a staff member, preferably with IT knowledge to assist him/her in managing software assets.

## **Business Policy & Staff Awareness**

It should be clearly set out in the business policy on the use of software, among other things, that -

- the use of unlicensed software (including those downloaded from the Internet without authorisation of the copyright owner) in business is strictly prohibited; and
- where staff members need to bring their own laptops or software for use in business, they should ensure that these are genuine copies and licensed for business use<sup>11</sup>.

In addition to setting out the relevant policies, the responsible personnel should also ensure that staff members comply with the policies. Measures to ensure compliance may include requiring permission to be sought from the responsible officer before staff members are allowed to bring/install software for use in business, and conducting regular software audits to identify any unauthorised software.

## **Management of Software Assets**

To facilitate the keeping of a clear record/registry of the organisation's software assets, it is advisable that –

- the responsible officer or IT Manager should set out the organisation's procedure for acquiring software;
- all purchases of software be centrally processed and approved by the responsible officer or IT Manager;
- installation of software be carried out by designated staff, with all installations in specific computers recorded in the inventory or software register; and

---

<sup>11</sup> Bringing privately-owned personal computers to and from the office for work purposes involves a high degree of risk, not only in terms of copyright infringement, but also issues related to business's data security and possible spread of computer viruses. It is preferable for businesses that require their staff members to work outside the office to provide them with portable computers specifically for business use.

- when acquiring computer hardware with pre-installed software, the responsible officer or IT Manager should ascertain that all pre-installed software are properly licensed and take steps to retain the licence documents properly.

The responsible officer or IT Manager should arrange to conduct *software audits* periodically to –

- (a) identify software assets in use;
- (b) verify the software assets with reference to licences, usage and rights;
- (c) identify any discrepancies that may exist between installations, the acquired licences and the terms of licences, e.g. the situation of “under-licence” i.e. insufficient number of licences for the number of users;
- (d) look for unauthorised copies of software;
- (e) take immediate action to rectify any identified discrepancies, including the purchase of required licences. Staff should immediately stop using the unauthorised software; and
- (f) record the results of the audit and the remedial actions, e.g. proof of purchase and report them to the responsible officer.

Useful information on “software asset management” (SAM) may be found at the website of the Business Software Alliance (<http://www.bsa.org/hongkong>).

## **(C) Movies, Television Dramas, Musical Sound or Visual Recordings**

The guidelines below apply specifically to the use of **movies, television dramas, musical recordings (sound or visual)** in business.

### **Business Policy & Staff Awareness**

Organisations should clearly set out in their policies on the use of movies, television dramas or musical recordings (sound or visual) that –

- the use of pirated copies (including pirated discs and copies downloaded illegally from Internet) in business is strictly prohibited; and
- the use of parallel imported copies for public playing or showing is prohibited<sup>12</sup>. It should be noted that “public playing” includes the playing of music in areas within the business premises to which the public have access, as well as for the enjoyment by internal staff members.

## Seeking Authorisation for Public Performance

“Public performance” includes the playing of music or movie clips inserted into business presentations. Organisations that need to play or show movies, television dramas, musical recordings (sound or visual) in public or for the benefit of their staff members in the course of their business should observe that, apart from using non-infringing copies, they should also acquire appropriate licences from the copyright owners or the relevant licensing bodies for the public playing or showing of such works<sup>13</sup>.

## (D) Books, Magazines, Newspapers, Periodicals

The guidelines below apply specifically to the use of **books, magazines, periodicals or newspapers** in business. This part is of particular relevance to organisations that use newspapers, periodicals, magazines and books in the course of business, such as the circulation of news articles for internal reference or using materials extracted from books for the provision of training.


## Licensing Agreements

For organisations that need to copy and distribute copyright works contained in books, newspapers, periodicals and magazines in the course of their business, the responsible officer should ensure that appropriate licences have been obtained from the relevant copyright owners or licensing bodies representing the owners, such as the Hong Kong Reprographic Rights Licensing Society Limited (<http://www.hkrrls.org>) which grants

<sup>12</sup> A parallel imported copy that is not used by a business for trading is not considered as an “infringing copy” for the purpose of the two offences under Part (I) above, unless –

- (a) the parallel imported copy concerned is a movie, television drama or musical (sound or visual) recording;
- (b) the copy is imported into Hong Kong within 15 months from the first publication of the work anywhere in the world; and
- (c) the copy is intended for public playing or showing.

<sup>13</sup> Licensing bodies, including Composers and Authors Society of Hong Kong “CASH” (<http://www.cash.org.hk>), Phonographic Performance (South East Asia) Limited “PP(SEA)L” (<http://www.ppsael.com>) and Hong Kong Recording Industry Alliance Limited “HKRIA” (<http://www.hkria.com>) grant public performance licences for musical works or recordings in their repertoire.



licences for the copying of copyright works published in printed form, and the Hong Kong Copyright Licensing Association (<http://www.hkcla.org.hk>) which grants licences for copying and distribution of articles from a number of local newspapers.

## Business Policy & Staff Awareness

It should be clearly set out in the business policy that -

- where appropriate licences have been obtained from the copyright owners or licensing bodies to authorise copying or distribution of copies of printed publications, employees must comply with the terms of the licences in making copies or distributing copies of such publications; and
- in the absence of appropriate licences, employees should not make for distribution or distribute any infringing copies of printed publications.

The terms of the licences acquired by the organisation should be publicised and made known to the staff to facilitate observance of the permissible limit of copying/distribution under the licences.

### Related Question

**Isn't our business allowed to make and distribute copyright works for the purpose of training or educating our staff?**

Permitted acts in the *Copyright Ordinance* are restricted to limited copying for educational purposes within bona fide educational establishments. They are not available in the general business environment.

### Further questions?

An introduction to the *Copyright Ordinance*, the *Copyright (Amendment) Ordinances 2007 and 2009* and some frequently asked questions related thereto could be found at <http://www.ipd.gov.hk/eng/faq/copyright.htm>