

保護知識產權研討會

「中小企業符合版權條例規定的要訣」

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在業務中符合版權規定的實務指引

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JONES
DAY®

Types of Copyright Works

- Literary (including software), dramatic, musical and artistic works
- Sound recordings, films, broadcasts and cable programmes
- Typographical arrangement of published editions

Acts Restricted by Copyright

- copy the work
- issue copies to the public
- rent copies to the public (new)
- make available copies to the public
- perform, show or play in public
- broadcast or include in a cable programme
- make adaptation

Civil Infringement

1. Primary

- by any person who without the licence of copyright owner does or authorizes another to do any of the restricted acts.
- directors' liability

Civil Infringement (Con't)

2. Secondary

- dealing with copies otherwise than for private and domestic use
 - import/export
 - possess/deal with
 - provide means for making infringing copies
- knowledge

Criminal Infringement

- make for sale or hire
- imports/exports (not for private and domestic use)
- sells/offers for sale
- exhibits/distributes
- possesses
 - computer program
 - movie
 - television drama
 - musical recordings (sound or visual)
 - distributes to an extent prejudicially affect the copyright owner.

New Provisions

S. 119B – making and distributing on a regular or frequent basis

- work in a printed form
 - book (including comic books)
 - magazine
 - periodical
 - newspaper
- making a copy for distribution → financial loss to owner
- distributing a copy
- safe harbour (numeric limits)

Directors' and Partners Liability

1. Section 125

- body corporate commits an offence
- consent or connivance of
- attributable to any act of
- director, manager, secretary or other similar officer
- any person purporting to act in capacity

Directors' and Partners Liability (Con't)

2. New Provision

- director/partners responsible for the internal management
- any person responsible for the internal management at the time the act was done
- evidence to raise an issue – not authorize
 - set aside financial resources and has directed the use of resources
 - has incurred expenditure
 - introduced policies/practices
 - taken action to prevent

Penalty

- Maximum fine of HK\$50,000 for each infringing copy
- Imprisonment up to 4 years

Practical Guide

1. Company Policy and Staff Awareness

- use of licensed work – software, printed work, music, movies etc.
- against use of pirated copies
- against unauthorized making and distribution of copies
- issue clear instructions and directions to staff – regular reminders
- licences from licensing bodies
- against unauthorized installation and acquisition
- made known to staff

Practical Guide (Con't)

2. Record – keeping

- records of purchase of genuine copies
 - receipts
 - invoices
 - original copies of software
 - accurate and updated inventory or register for all purchased software and publications
- records of licence
 - licensing terms
 - restrictions
- internal records of usage
 - record of copying
 - number of copies distributed
- expenditure accounts

Practical Guide (Con't)

3. Audit

- regular checks
 - announced/unannounced
 - identify discrepancies
 - track usage
 - verify against licence terms and rights
 - remedial action
 - disciplinary action

Practical Guide (Con't)

4. Designated Staff

- appoint a staff member (with IT knowledge for software)
- software asset management
 - procedure for acquiring software
 - purchases centrally processed and approved
 - installation centralized
 - be alert to hardware with pre-installed software

Practical Guide (Con't)

5. Budgeting

- set aside financial resources
- use of resources
- document the budget and directions given
- records of procurement
- licensing bodies (package deals)

Practical Guide (Con't)

6. Other steps

- distribution – hard copy, electronic
- copy, posting on Intranet
- purchase from authorized sellers or resellers only
- beware of one software licence one computer principle
- illegal downloads
- misusing specific – purpose licences (academic licences and IT developer licences)
- guide book



THANK YOU