

Hong Kong's Amended Copyright Law Prohibitions on circumvention devices

To enhance the protection of technological measures, the Government has introduced new provisions imposing criminal and civil liabilities on people who deal in circumvention devices or provide a circumvention service for commercial purpose. It is planned that the new provisions would take effect in early 2008.

This leaflet highlights the effects of the new criminal and civil provisions.

Prohibited activities

Under the Copyright (Amendment) Ordinance 2007, the following activities will be subject to civil *and* criminal sanctions:

- making circumvention device for sale or hire
- importing or exporting circumvention devices for sale or hire
- dealing in circumvention devices (including selling, letting, exhibiting in public or distributing in the course of trade or business)
- providing a commercial circumvention service which enables customers to circumvent technological measures used to protect copyright works

Penalties

A person convicted of the above offences could be liable to a fine of \$500,000 and to imprisonment for up to 4 years. In addition, he or she may be subject to civil claims from copyright owners.

What is a “technological measure”?

Copyright owners have the option of using technological measures to protect copyright works that are distributed in electronic form. Such measures include:

- measures that prevent or restrict unauthorised copying of works (“copy protection measures”). Examples include the copy protection mechanism commonly found in computer games that prevents unauthorised copying; or

- measures that protect copyright works from unauthorised access (“access control measures”). Examples include the encryption of copyright works placed on websites so that only authorised persons could gain access to such works by using a password.

What is a circumvention device / service?

Circumvention devices are devices that are primarily designed or used for hacking or bypassing technological measures (irrespective of whether they are copy protection measures or access control measures). Examples include:

- modified chips or devices installed in game consoles to allow playing of pirated computer games;
- unauthorised software that disables password protection so that users could gain access to copyright works without authorisation.

Circumvention services refer to any services performed for the purpose of enabling or facilitating the circumvention of technological measures. An example is the offering of a service to modify game consoles to enable people to play pirated computer games on them.

Exceptions

The above prohibitions do not apply to the devices specified below (as well as the related circumvention services) as long as they do not contain other functions:

- devices used to identify or disable spyware (spyware is a device or software that collects or disseminates information relating to the manner of a person’s use of a computer network);
- devices used to prevent access of minors to harmful materials on the Internet; and
- devices used to circumvent regional coding to enable users to gain access *only* to parallel imported works (*note*: devices which enable users to gain access to both pirated copyright works and parallel imported copyright works are *illegal*).

In relation to computer games, this means that you should *not* deal in modified game consoles or chips that enable users to gain access to *both* pirated *and* parallel imported computer games. However, if the modified game consoles allow users to gain access to

genuine parallel imported works *only*, the new civil liability and criminal liability will not arise.

Details of the Copyright Ordinance and FAQs on the anti-circumvention provisions could be found on the website of the Intellectual Property Department at www.ipd.gov.hk.

© The Government of the Hong Kong Special Administrative Region October 2007