

**Business Facilitation Advisory Committee
Task Force on Business Liaison Groups**

Copyright Infringement of Playing Musical Works at Hotels

Background

In Hong Kong, copyright for musical works (e.g. songs and melodies) is an automatic right under the Copyright Ordinance (Cap. 528) (“the Ordinance”). It exists when a musical work is created and recorded and no registration is required. The Customs and Excise Department (C&ED) is the enforcement agency of the Ordinance against criminal infringement of copyright works.

2. In mid-December 2013, a large scale enforcement action was taken on several bars and a technology company by C&ED. 49 sets of karaoke systems loaded with suspected infringing songs and movies were seized. Investigation is still ongoing.

Trade’s Concern

3. Musical works are often played in the lobbies, restaurants, bars, guestrooms and karaoke rooms etc. of hotels. At a recent Business Liaison Group (BLG) meeting for hotels, the trade requested C&ED to brief them on the related enforcement policy and actions so that they could avoid committing copyright infringement offences.

Administration’s Response

4. In response, C&ED briefed the trade that under the Ordinance, some infringements were civil and some were criminal. If a business establishment used an infringing copy of a copyright work (such as a pirated song) in the course of business, it committed a criminal offence, and under the

provision of end user liability, the proprietors/ owners/ directors/ managers of the business establishment might be liable to prosecution. C&ED would take enforcement actions against criminal copyright infringement upon receiving complaints. In order not to cause unnecessary disturbances to the trade, C&ED would look into the copyright issue first. C&ED would ask the copyright owners of the musical works concerned or their representatives to provide documentary proofs that they were the legitimate copyright owners before taking actions. For the trade to avoid copyright infringement, they should be vigilant to request the suppliers of musical works to provide documentary proofs that they were the legitimate copyright owners or their authorized representative before purchasing any musical works from them. Moreover, the trade should properly record and document its efforts and endeavours made in a bid to comply with the licensing requirements of the music industry. Such records and documentations could serve as proofs that the trade had exercised due diligence to avoid copyright infringement and that would be important in the trade's defence if C&ED launched investigation upon the trade for alleged copyright infringement.

Way Forward

5. Members are invited to note the content of this paper and offer comments, if any.

Customs and Excise Department
June 2014