

# *THE JOURNAL*



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## **From the Editor**

*Firstly I should apologise to all members for the delay in getting out this edition of the newsletter. It was at least still April when I started to prepare it, but it may well be May by the time you are reading this.*

*Of course had I written this editorial at the beginning of April, I would have been welcoming the implementation of the Intellectual Property (Miscellaneous Amendments) Ordinance – little did any of us know what was going to happen. Indeed in the editorial in the last edition I predicted that “this year will be one of consolidation rather than revolution”. How wrong I was! It just goes to show that there is nothing like making predictions as a way of making yourself look very foolish very quickly. Anyway, more on this topic below.*

## **Copyright Confusion**

*This isn't the place to go into the rights and wrongs of the issues, but members can hardly fail to be aware of the controversy that has arisen since the coming into force on April 1 2001 (All Fools Day!) of the Intellectual Property (Miscellaneous Amendments) Ordinance 2000. A lot of the scare stories (with teachers being locked away for life for having photocopied the crossword) have been the result of misunderstanding the law. But amid the confusion some genuine points have been made that suggest that the law as it stands is a long way from being ideal.*

*Unfortunately the Government have not helped matters by acting like a headless chicken. Every day it seems that there is a new pronouncement on what they propose to do. The original plan was to rush through Legco a suspension ordinance in a single day. Thankfully the Government have stepped back from such a knee-jerk reaction and are proposing to introduce the suspension bill*



*followed by a period for consultation.*

*The position of the Institute, however, is that suspension could be a mistake. Council considered the matter at a recent meeting and felt that the Government should not act hastily. Instead the Council favoured taking no action until a full consultation could be conducted, not least because if there are any problems with the law, they may involve not simply the amending Ordinance of 2000, but also provisions of the basic 1997 Copyright Ordinance. We have therefore proposed that rather than suspending the amending Ordinance, a full review of the issue of criminal sanctions be carried out with the possibility, if necessary, of more substantive amendments being made. In the meantime the Department of Justice can simply use its discretion when deciding whether or not to prosecute any alleged cases of criminal copyright infringement.*

*Watch this space.*

### **Retail Services to be allowed at OHIM**

*Members may wish to note Communication No. 3/01 of the President of the Office [for Harmonization in the Internal Market] of 12 March 2001 to the effect that following the decision of the 2<sup>nd</sup> Board of Appeal of OHIM in the Giacomelli case, Community trade marks will now be available for retail services. The specification will need to limit the field of activity or nature of the service, and OHIM proposes phrases such as “retail services in respect of food and beverages” or “retail services of a department store”.*

### **Education Programme**

*The Institute’s education course began in February with a total of 43 registered students. Apart from those who are exempted they are currently studying some basics of Hong Kong law, and the first module in trade mark law begins on May 24 2001.*

### **IPD Lecture**

*This newsletter may be just in time to remind you that on May 4 2001 there will be another in the IPD’s series of guest lectures. The lecturer next Friday will be Dr Xue Hong who will talk about the latest Internet developments in China. Numbers are limited, but if you have not yet applied to*



go and wish to, please contact the IPD regarding possible availability of spaces.

### **From the IPD**

The following was recently issued by IPD:

Circular No. 2 of 2001      *Renewal of United Kingdom Designs Deemed  
Registered in Hong Kong*

### **Committee News**

Please remember that if you would like to raise any matters falling within the remit of these sub-committees you are encouraged to contact them at any time. The contact person for each committee is given below:

*Patents and Designs (Graeme Hall): No activity since the last newsletter.*

*Trade Marks (Peggy Cheung): No major developments since the last newsletter. The trade marks committee is still waiting for the IPD to issue a further draft of the Trade Mark Rules for consultation. In the meantime the Institute continues to take an active role in the review of the new Work Manual that is being drafted by the IPD.*

*Copyright (Matthew Laight): The copyright committee will be meeting shortly to discuss the controversy regarding the criminal sanctions for certain types of copyright infringement and the proposed suspension of the Intellectual Property (Miscellaneous Amendments) Ordinance 2000.*

*Internet (Matthew Laight/Jeannie Smith): The Internet committee has started to meet to discuss a reply to a WIPO paper two on what constitute use of a sign on the Internet. The committee will also be studying a draft Domain Name Dispute Resolution Policy for Hong Kong.*

*Education (Sandra Gibbons): Work is progressing with identifying lecturers for the trade mark module commencing in May.*



### **Dates for your diary**

*June 5<sup>th</sup>-8<sup>th</sup>*

*Helsinki*

*ECTA*

### **News of Members**

*Irene Ng, a member of Council, is now to be found at Hastings & Co.*

*The following new members have recently joined the Institute as Ordinary Members: Davina Lee of Bird & Bird, and Yu Kin Fung of Wenping.*

### **And finally.....**

*Apologies for anybody who attended the Spring Dinner and thought that dinner started rather late. In future we will try and avoid holding Institute events in Happy Valley on racing nights when it is raining. Transport problems delayed many people and we had to hold up dinner until they arrived.*

*A social event is being planned for June, and full details will be circulated in due course.*

*Please send any comments about this edition of The Journal, any letters or articles for future issues, to the Editor Graeme Hall at [graemehall@lloydwise.com.hk](mailto:graemehall@lloydwise.com.hk)*

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