

Legislative Council Bills Committee

Copyrights (Suspension of Amendments) Bill 2001

Purpose

This paper provides information on the issues raised by the Bills Committee on 11 May.

Exemption from Criminal Liabilities on the Use of Pirated Computer Software Installed Before 1 April

2. A Member suggested that to alleviate the financial pressure on the business sector, provisions should be made in the Copyright (Suspension of Amendments) Bill 2001 (“the Bill”) to exempt from criminal liabilities on possession of pirated computer software in business, which has been installed before the commencement of the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 (“the Ordinance”) on 1 April.

3. We note that the business sector generally supports the spirit of protecting copyright by not using pirated computer software. Enterprises have also begun to use legitimate software (see paragraphs 8-15 of Paper CB(1) 1196/00-01(05)). At this stage, the proposed exemption would send a confused and wrong message to the business sector, undermining Hong Kong’s efforts in combating piracy of computer software.

4. In addition, the proposal will create a major loophole from the law enforcement point of view, so that the Government’s effort in combating the use of pirated software would be in vain. Unless a software is published after 1 April, it will be extremely difficult to prove that the software concerned is installed after 1 April. As such, we consider the proposal impracticable.

Meaning of Certain Expressions in Clause 2(2)

5. Some Members considered that the meaning of the expressions “movie”, “television drama” and “intended to be published in Hong Kong or elsewhere” in the Bill was not clear enough.

6. The legislative intent of adopting the expressions “movie” and “television drama” in the Bill has been explained in detail in our paper for the LegCo Subcommittee’s meeting on 3 May (paragraphs 22-23 of CB(1) 1130/00-01(01)).

7. Section 7 of the Copyright Ordinance provides a very broad definition for the word “film”, which may include a recording of any moving image. Clause 2(2)(a) adopts the word “movie” which means a cinema film the production of which is mainly for showing in cinemas. The content of the film can be dramatic, documentary or otherwise.

8. The term “television drama” used in Clause 2(2)(b) means a drama film produced primarily for television broadcast. Apart from those produced by the local television stations, a significant number of television dramas produced in the Mainland, Taiwan, Japan and even America and Europe have been manufactured as optical discs for sale. Piracy of these works is also common. This Clause does not cover non-drama television programmes, such as game programmes, news and information programmes as well as documentary films etc.

9. Regarding the use of the term “television drama”, we have consulted the local television stations. They raise no objection to the term itself.

10. However, the representatives concerned consider that their interests would not be adequately protected if only “television drama” is to be excluded from the scope of the suspension. They suggest that all television programmes should be included in the scope of Clause 2(2)(b) on the basis that some non-drama television programmes are not “information” programmes, and considerable resources have been invested on their production. They also argue that television stations have already provided authorization mechanism for persons and organizations that need to record these programmes. Moreover, educational establishments may also record television programmes for the purposes of instruction under the permitted acts of the Copyright Ordinance. The inclusion of all television programmes in Clause 2(2)(b) would not therefore cause inconvenience to the public.

11. We consider that if all television programmes are excluded from the suspension, it will go against the original intent of the Bill. The Bill seeks to address the worries of enterprises and educational establishments on the possibility of incurring criminal liabilities when making timely copies of copyright works including television programmes for information dissemination and educational purposes. We have also explained to the representatives of the television stations that the Bill has not made any amendments to the criminal provisions of the Copyright Ordinance which exist before the commencement of the Ordinance. Therefore, after the enactment of the Bill, it is still an offence if a person unlawfully records non-drama television programmes (such as game programmes, variety programmes or television documentaries etc) for sale. All

in all, we are of the view that the current scope of Clause 2(2) is appropriate.

12. The purpose of adopting the expression “intended to be published in Hong Kong or elsewhere” is to cover in Clause 2(2) those movies and television drama which have not been formally screened or broadcast. In fact, movies that have not yet been screened are on and off bootlegged and manufactured as optical discs for sale.

Parallel Importation of Computer Software

13. Some Members suggested to exempt from criminal liabilities of enterprises which use parallel imported computer software. We have sought legal advice and agreed that this suggestion would not be beyond the scope of the Bill. We are now drafting the relevant committee stage amendments to the Bill.

14. As for the relaxation of criminal and civil requirements in respect of parallel imported computer software, we will consult the industry and draw up another bill for introduction into the Legislative Council as soon as possible.

Enforcement and Prosecution Guidelines of the Customs and Excise Department

15. A Member suggested that after enactment of the Bill, the Customs and Excise Department should follow overseas practices to place their enforcement and prosecution guidelines on the Internet to facilitate compliance of the law by the public.

16. The information provided by the relevant overseas web site mainly includes explanations on the contents and provisions of the legislation as well as factors taken into consideration in the course of prosecution. In fact, similar arrangements have already been made in Hong Kong. The Intellectual Property Department has placed the intellectual property legislation, frequently asked questions and answers concerning intellectual property legislation and other relevant information on the Internet. The Customs and Excise Department has also set up a hotline for public enquiries on enforcement aspect. Members of the public can make direct enquiries with the staff of the Customs and Excise Department to find out the implications of the latest legislation and whether certain act is in breach of the law. Upon the enactment and commencement of the Bill, we will compile related guidelines and frequently asked questions and answers, enhance the publicity hotline service and strengthen the intellectual property web pages to facilitate compliance of the law by the public.

Commerce and Industry Bureau
May 2001