

Legislative Council Bills Committee

Copyright (Suspension of Amendments) Bill 2001 Committee Stage Amendments

Purpose

This paper provides explanation for the committee stage amendments (see Annex) to the Copyright (Suspension of Amendments) Bill 2001.

Amendments to Clause 2(2)(c)

2. The purpose of Clause 2(2)(c) is to define sound recording or film (including Music TV and Karaoke discs), the whole or a predominant part of which consists of music and songs (including melodies and lyrics). To convey this meaning more clearly, we have amended Clause 2(2)(c) to replace “substantial” by “predominant”.

Clauses 2A, 2B and 2C – Exemption from the Criminal Liability on Using Parallel Imported Computer Program

3. Clause 2A stipulates that section 2(1) of the suspension provisions does not apply in relation to an infringing copy of a computer program that is an infringing copy by virtue of section 35(2). Section 35(2) provides that “a copy of a work is an infringing copy if its making constituted an infringement of the copyright in the work in question”. According to Clause 2A, the new Ordinance continues to apply to pirated computer program made in Hong Kong.

4. Clause 2B stipulates that the suspension provision in Clause 2(1) does not apply in relation to an infringing copy of a computer program that is an infringing copy by virtue of section 35(3) (Subclause 2B(a)) and was not lawfully made in the country where it was made (Subclause 2B(b)). While section 35(3) covers imports of infringing copies, such copies include pirated goods which were not lawfully made abroad and parallel imported goods which were lawfully made. Provisions specifying that an infringing copy was “not lawfully made” (Subclause 2B(b)) are added to Clause 2B so that the new Ordinance may continue to apply to copies of pirated computer programs imported from abroad, but will not include copies of computer programs which were lawfully made abroad with the authorization of copyright owners.

5. Under Clause 2C, the suspension provision in Clause 2(1) does not apply in relation to an infringing copy of a computer program that is an infringing copy by virtue of section 35(3) (Subclause 2C(a)) and was made in a

country where there is no or very low level of copyright protection (for example extremely short duration of copyright) (Subclause 2C(b)). In other words, even though copies of a computer program are lawfully made in such a country, there is no real difference between the said copies and pirated goods in view of the limited extent of copyright protection. In this connection, the new Ordinance will continue to apply. It should be noted that Subclause 2C(b) adopts the substance of section 35(9).

6. The suspension of the new Ordinance does not apply to copies of a computer program by virtue of Clauses 2A, 2B and 2C. Since parallel imports that are lawfully made overseas are not copies of a computer program by virtue of Clauses 2A, 2B and 2C, they are thus subject to the suspension measures.

Clause 3A

7. Clause 3A is a technical amendment. Subclause 3A(a) provides that an infringing copy of a computer program does not include an infringing copy that is in a printed form.

8. Subclause 3A(b) provides that if a copy of a work (not being a computer program itself) is made available to the public and to facilitate the viewing or listening of that work by members of the public, it is technically necessary to provide an associated computer program, a copy of that program is not an infringing copy for the purposes of Clause 2A, 2B and 2C. For example, downloading certain web pages or broadcasting/film works from the Internet technically requires downloading and copying the associated computer programs of the web pages or broadcasting/film works concerned for viewing or listening. The suspension measures will apply to copies of such associated computer programs.

Commerce and Industry Bureau
May 2001

COMMITTEE STAGE

Amendments to be moved by the Secretary for
Commerce and Industry

<u>Clause</u>	<u>Amendment Proposed</u>
2	<p>(a) In subclause (1), by deleting "subsection (2)" and substituting "subsections (2) to (2C)".</p> <p>(b) In subclause (2)(b), by adding "or" at the end.</p> <p>(c) In subclause (2)(c) -</p> <ul style="list-style-type: none">(i) by deleting "substantial" and substituting "predominant";(ii) by deleting "或任" and substituting "及任";(iii) by deleting "; or" and substituting a full stop. <p>(d) By deleting subclause (2)(d).</p> <p>(e) By adding -</p> <p style="padding-left: 40px;">"(2A) Subsection (1) does not apply in relation to an infringing copy of a computer program that is an infringing copy by virtue of section 35(2) of the Copyright</p>

Clause

Amendment Proposed

Ordinance (Cap. 528).

(2B) Subsection (1) does not apply in relation to an infringing copy of a computer program that -

- (a) is an infringing copy by virtue of section 35(3) of the Copyright Ordinance (Cap. 528); and
- (b) was not lawfully made in the country, territory or area where it was made.

(2C) Subsection (1) does not apply in relation to an infringing copy of a computer program that -

- (a) is an infringing copy by virtue of section 35(3) of the Copyright Ordinance (Cap. 528); and
- (b) was made in a country, territory or area where there is no law protecting copyright in the work

Clause

Amendment Proposed

or where the
copyright in the work
has expired.".

3. By adding -

"(3A) For the purpose of subsections
(2A), (2B) and (2C), "infringing copy" (侵
犯版權複製品) does not include an infringing
copy -

- (a) that is in a printed form;
or
- (b) that is related to a work
not being a computer
program itself and that is
technically required for
the viewing or listening of
that work by a member of
the public to whom a copy
of the work is made
available.".