

Legislative Council Bills Committee
Copyright (Suspension of Amendments) Bill 2001

Committee Stage Amendments (Third Version)

Purpose

This paper provides explanation for the new Clause 2(2E) in the third version of the Committee Stage Amendments (see Annex) to the Copyright (Suspension of Amendments) Bill 2001.

Background

2. The Intellectual Property (Miscellaneous Amendments) Ordinance 2000 amended the main criminal provisions of the Copyright Ordinance by, *inter alia*, replacing the expression “for the purpose of trade or business” by “for the purpose of, in the course of, or in connection with, any trade or business”. Some Members considered that the scope of the expression “in connection with any trade or business” was too wide and suggested that this expression be suspended.

3. We have consulted the Customs and Excise Department and sought legal advice on the proposal. After thorough consideration, we conclude that the proposed suspension will not have significant impact on the Government’s efforts in combating corporate copyright piracy (e.g. the use of pirated computer software in business). Moreover, as we would like to reach a consensus with the Bills Committee the soonest possible, we agree to suspend the expression concerned.

Clause 2(2E)

4. Clause 2(2E) provides that, for the purposes of any offence under section 118 or 120 of the Copyright Ordinance relating to copyright works not subject to the suspension of amendments (that is, computer programs, movies, television dramas and music as described in subclauses 2, 2A, 2B and 2C of Clause 2), the reference to “for the purpose of, in the course of, or in connection with, any trade or business” in the relevant subsections of the Copyright Ordinance shall be read as a reference to “for the purpose of, or in the course of, any trade or business”.

5. In other words, a person will commit an offence if he possesses an infringing copy of any of the above-mentioned works for the purpose of or in the

course of any trade or business, e.g. frequent playing of pirated music discs in karaoke lounges or using pirated computer software in business are criminal offences.

6. Since the expression “for the purpose of, in the course of, or in connection with, any trade or business” bears slight differences in terms of wording used in various subsections of the Copyright Ordinance, the amendments to the relevant subsections of the Ordinance are set out in (a) to (c) under Subclause 2E respectively.

7. Subclause 2E commences retroactively on 1 April 2001 to ensure that the provisions of the Bill will apply to cases currently under investigation.

Commerce and Industry Bureau
June 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), with effect on and from the commencement of this Ordinance" and substituting "subsections (2) to (2C), with effect on and from 1 April 2001".</p> <p>(b) In subclause (2)(a), by deleting "and that has been published or is intended to be published in Hong Kong or elsewhere".</p> <p>(c) In subclause (2)(b), by deleting "and that has been published or is intended to be published in Hong Kong or elsewhere;" and substituting "; or".</p> <p>(d) 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.

Clause

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(e) By deleting subclause (2)(d).

(f) By adding -

“(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 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

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Copyright Ordinance
(Cap. 528); and

- (b) was made in a
country, territory or
area where there is
no law protecting
copyright in the work
or where the
copyright in the work
has expired.

(2D) For the purposes 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 incorporates the
whole or any part of
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

Clause

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copy of the work is
made available.

(2E) With effect on and from 1
April 2001, for the purposes of any
offence under section 118 or 120 of
the Copyright Ordinance (Cap. 528)
relating to an infringing copy of
any of the works described in
subsections (2), (2A), (2B) and (2C)

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(a) the reference to "for
the purpose of, in
the course of, or in
connection with, any
trade or business" in
sections 31(1)(a) and
(c), 32(1)(c),
95(1)(a) and (c),
96(5) and (6),
109(1)(a), 118(1)(d)
and (e), 207(1)(b),
211(1)(b) and 228(1)
of that Ordinance
shall be read as a
reference to "for the
purpose of, or in the

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course of, any trade or business”;

- (b) the reference to “otherwise than for the purpose of, in the course of, or in connection with, any trade or business” in sections 31(1)(d), 95(1)(d) and 118(1)(f) of that Ordinance shall be read as a reference to “otherwise than for the purpose of, or in the course of, any trade or business”; and

- (c) the reference to “for the purpose of, in the course of, or in connection with, any trade or business” in sections 118(4), (5) and (8), 120(2) and 273(2)(a) of that

Clause

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Ordinance shall be read as a reference to "for the purpose of, or in the course of, any trade or business".

- (g) In subclause (3), by deleting "The terms" and substituting "Except as otherwise provided in subsection (2D), the terms".