

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

Purpose

This paper seeks to briefly explain in non-legal terms the impact of the implementation of the Copyright (Suspension of Amendments) Bill 2001 (including the committee stage amendments proposed by the Government) (“the Bill”) on the newly amended criminal provisions of the Copyright Ordinance.

Scope of the Suspension

2. The Bill provides different treatments for the infringing copies of the following two categories of copyright works :

(A) for copyright works that are movies, television dramas, musical works and computer programs, the amended criminal provisions which came into effect on 1 April will continue to apply, though with a slightly narrowed scope;

(B) for copyright works not included in item (A), the amended criminal provisions will revert to the position before the amendments took effect.

(A) Movies, television dramas, musical works and computer programs

3. For works under item (A), the Bill will temporarily delete the expression “in connection with any trade or business” in the newly amended criminal provisions. Although the scope of the criminal provisions will be slightly narrowed, anyone who uses an infringing copy of the works under item (A) for the purpose of or in the course of any trade or business will still incur criminal liabilities upon the commencement of the Bill.

4. Regarding the definitions of the works under item (A), a “movie” refers to a film produced mainly for the purpose of being shown in cinemas; a “television drama” refers to a drama film produced primarily for television broadcast; a “musical work” includes the sound recordings of pure music and songs, and music video (commonly known as MTV), etc.

5. Infringing copies of computer programs that fall within the following three categories will be treated in the same way as the works under item (B):

- (a) parallel-imported goods that are lawfully made overseas;
- (b) infringing copies in a printed form (e.g. photocopies of computer programs from a book on computers);
- (c) downloading of certain copyright works (not being computer programs themselves) from the Internet for viewing and listening technically requires downloading and copying of one or a few computer programs incorporating the work concerned.

6. Upon the enactment and implementation of the Bill, the use of legitimate copies of “parallel-imported” computer software in business will not constitute a criminal offence. It should be noted that to import “parallel-imported” copies of computer software otherwise than for private and domestic use or the sales of such copies constitute criminal offences before 1 April. The Bill cannot suspend the criminal provisions in relation to these acts. The Government has, in principle, agreed to relax the relevant civil and criminal provisions and is now consulting various interest parties.

(B) All other copyright works

7. For copyright works not included in item (A), the Bill will revert the newly amended criminal provisions to the position before the amendments took effect. It should be noted that it is still a criminal offence if anyone deals in infringing copies of such copyright works. For example, a person who engages in dealing in infringing copies of a book will commit a criminal offence and is liable to a maximum penalty of 4 years’ imprisonment and a fine of \$50,000 in respect of each infringing copy. However, the use of infringing copies of a book in business does not constitute a criminal offence.

Commencement Date

8. The Bill commences retroactively on 1 April to ensure that the provisions of the Bill apply to cases currently under investigation.