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**Report of the Bills Committee
on Copyright (Suspension of Amendments) Bill 2001**

Purpose

This paper reports on the deliberations of the Bills Committee on the Copyright (Suspension of Amendments) Bill 2001 (the Bill).

Background

2. The implementation of the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 (amending Ordinance), which came into effect on 1 April 2001, has given rise to grave concern and heated discussions within the community, in particular with regard to the photocopying of newspaper articles and the use of such materials in business enterprises and educational establishments. The effect of the amending Ordinance is to extend the scope of criminal provisions to cover any person who knowingly possesses an infringing copy of a copyright work in the course of any trade or business. As the term “business” as used in the Copyright Ordinance may also cover commercial, educational, charitable or government activities, there are particular concerns among those in the business and educational sectors. While the business sector considers that the threat of criminal proceedings and the absence of a convenient mechanism to obtain the required authorizations have hampered the dissemination of information in enterprises, the educational sector is concerned about the lack of a clear definition for copying within a “reasonable extent” in relation to the permitted acts for educational copying provided in the Copyright Ordinance.

3. To address the concerns of the public, the Secretary for Commerce and Industry announced on 12 April 2001 that the Government would introduce a legislative proposal, as an interim measure, to suspend the application of the amending Ordinance to the key criminal provisions in the Copyright Ordinance insofar as they apply to:

- (a) works in the printed media, viz, newspapers, magazines, periodicals and books;
- (b) works in sound or television broadcast, or included in subscription cable television programmes; and
- (c) works downloaded from the Internet,

subject to certain exceptions.

4. A draft Bill was submitted to the Panel on Commerce and Industry for consideration on 19 April 2001. Upon the recommendation of the Panel, a subcommittee was formed under the House Committee to study the draft Bill in detail. The Subcommittee held two meetings on 25 April and 3 May 2001 respectively to consider the second version of the draft Bill. Owing to the need for further details on the technical aspects of the draft Bill and on the Administration's long-term plans to address the problems, the Subcommittee recommended that a Bills Committee be formed to continue the deliberations on the Bill upon its introduction to the Council. A report on the deliberations of the Subcommittee was submitted to the House Committee on 4 May 2001 (LC Paper No. CB(1) 1157/00-01).

The Bill

5. The Bill was gazetted on 27 April 2001 and was introduced into the Council on 2 May 2001. The Bill aims to revert, with respect to all copyright works but subject to some exceptions, the key criminal provisions in the Copyright Ordinance to the position before the commencement of the amending Ordinance. The exceptions proposed in the Bill are movies, television dramas, sound recordings or films the whole or a substantial part of which consists of a musical work and any related literary work, and computer programs. The suspension will not affect the civil remedies available to copyright owners in respect of any copyright works.

6. The Bill also provides for the suspension to be lifted on 31 July 2002 or on such other date as the Secretary for Commerce and Industry may specify by notice published in the Gazette subject to the approval of the Legislative Council.

The Bills Committee

7. The Bills Committee was formed on 4 May 2001. The membership list of the Bills Committee is at **Appendix I**. Under the chairmanship of Hon SIN Chung-kai, the Bills Committee held five meetings with the Administration and received a total of 54 submissions. Twenty-one organizations representing the copyright industry, the business sector, the educational sector and other interest groups appeared before the Bills Committee to give their views on the Bill.

Deliberations of the Bills Committee

8. The deliberations of the Bills Committee have been focused on the following areas:

- (a) the need for suspending the amending Ordinance;
- (b) the scope of the copyright works to be excluded from the suspension and the extent of criminal liability applicable to an infringing copy of such works; and
- (c) the period of suspension.

Need for suspension

9. The Bills Committee notes that the amending Ordinance has aimed at strengthening the criminal provisions against copyright piracy in the course of business. By replacing the phrase "for the purpose of trade or business" with "for the purpose of, in the course of, or in connection with, any trade or business" where it has appeared in the Copyright Ordinance, the amending Ordinance has extended criminal liabilities to the possession of an infringing copy of the copyright works in the course of business. The implementation of the amending Ordinance has sparked off concerns among enterprises, which have a practical need to make timely copies of newspaper or magazine articles or radio or television broadcasts, or to download works from the Internet, and among teachers who routinely make multiple copies of copyright works for classroom use. The Bill which seeks to suspend the operation of the above amendments subject to certain exceptions is an interim arrangement to enable the Administration to look for longer-term measures to address the concerns of the community.

10. The Bills Committee notes from the representations it received that there are both support for and opposition to the suspension of the amending Ordinance.

The reprographic rights licensing bodies oppose the suspension of the amending Ordinance on the grounds that the suspension will unreasonably prejudice the legitimate interests of copyright owners of literary and artistic works elsewhere. They consider that innocent and negligent photocopying infringements will not pass the minimum threshold for criminal liability. Other deputations, in particular those from educational bodies and trade associations, support the suspension Bill and consider that it will enable the Administration to formulate a long-term solution to address the problems. A summary of the views of the deputations is provided in **Appendix II**.

11. The Bills Committee finds that the impact of the amending Ordinance on the small and medium enterprises is particularly serious. These enterprises are still unfamiliar with the provisions of the amending Ordinance, and they are faced with inadequate supply of legitimate computer software and the lack of cheaper alternatives. The Government, on the other hand, has agreed in principle to relax the legal requirements regarding parallel-imported products, but there is a need for more detailed study of the technical issues involved and consultation with the industry before restrictions on parallel importation of computer software can be relaxed. Although the Administration considers that relaxing the legal restrictions on parallel importation cannot be effected within the context of the suspension Bill, it agrees with that from the policy point of view and undertakes to accord priority to the consideration of the matter. In the meantime, enterprises can make use of the "downgrade" arrangement provided by the software publishers, so that users can continue using "pirated" out-dated versions of the software without fear of prosecution if they have paid for the new copyrighted versions of the software.

12. In considering the need for the suspension and the impact of the amending Ordinance on the community, the Bills Committee has examined the interpretation and effect of those expressions which have caused the public a lot of concern, including the scope of "in connection with" and the meaning of "business" in the context of the Copyright Ordinance.

13. Some members consider the scope of the expression "in connection with any trade or business" too wide. It tends to confuse the public in that they may have difficulty in knowing exactly the circumstances under which an offence would be committed. The Bills Committee notes that the expression was intended to make "possessing an infringing article other than for personal, domestic use" a criminal offence. However, after studying the examples provided by the Administration to illustrate the intended scope of the expression, members still have doubt if the expression is wider than what was intended. Members consider that it is more appropriate to suspend this expression. After consulting the Customs and Excise Department and seeking legal advice, the Administration has come to the view that the proposed suspension of the expression would not have

significant impact on Government's efforts in combating corporate copyright piracy. The Administration would therefore move a Committee Stage Amendment (CSA) (new clause 2(2E)) to suspend the effect of the expression "in connection with any trade or business" in the newly amended criminal provisions in respect of the copyright works excluded from the suspension. Although the scope of the criminal provisions will be slightly narrowed, anyone who uses an infringing copy of such works for the purpose of or in the course of any trade or business will still incur criminal liabilities upon the commencement of the Bill.

14. As regards the meaning of "business"¹, the Bills Committee has been referred to the meaning given in the Oxford English Dictionary and relevant UK case law and legal publication, and notes that the term as used in the context of the Copyright Ordinance is not confined to commercial activities but could also cover educational, charitable or government activities. Hence, as far as the Government's legislative intent is concerned, the practical effect of the amending Ordinance effective from 1 April 2001 goes beyond targeting commercial establishments only. The suspension Bill will therefore serve to suspend the criminal sanctions against, say, the possession in the course of business (including teaching activities in educational establishments) of an unauthorized photocopy of copyright works.

Scope of copyright works to be excluded from the suspension

15. The Bills Committee notes the different views put forward by the depositions in respect of the scope of copyright works to be excluded from the suspension. The works proposed for exclusion from the suspension are movies, television dramas, sound recordings or films the whole or a substantial part of which consists of a musical work and any related literary work, and computer programs. According to the Administration, these works generally have substantial commercial value and are not normally "information" disseminated in enterprises or schools. Piracy of these works in Hong Kong and elsewhere is rampant. The amending Ordinance, which has the effect of providing a higher level of protection, should continue to apply to them.

16. Some depositions however hold a different view. The television companies consider that the exceptions should cover non-dramatic television programmes which also need to be protected, while trade associations support the casual copying of television broadcasts or cable programmes or downloading from the Internet for the purpose of timely and convenient information dissemination in the work place.

¹ Section 198 of the Copyright Ordinance defines the term "business" to include a trade or profession.

Movies and television dramas

17. On the scope of movies and television dramas to be excluded from the suspension, members note that movies and television dramas are not defined but are described in clauses 2(2)(a) and (b) respectively as one “that has been published or is intended to be published in Hong Kong or elsewhere”. Some members consider the meaning of the expressions “movie”, “television drama” and “intended to be published in Hong Kong or elsewhere” not clear enough. According to the Administration, section 7 of the Copyright Ordinance provides a broad definition for the word “film”, which may include a recording of any moving image. The word “movie” in clause 2(2)(a) of the Bill should mean a film produced mainly for the purpose of being shown in cinemas. The content of the film can be dramatic, documentary or otherwise. The term “television drama” used in clause 2(2)(b) refers to a drama film produced primarily for television broadcast. This clause does not cover non-drama television programmes, such as games programmes, news and information programmes as well as documentary films, etc. As regards the expression “intended to be published in Hong Kong or elsewhere”, the expression aims to cover those movies and television dramas which have not been formally screened or broadcast but piracy of which is common.

18. The Bills Committee notes that local television stations do not consider their interests being adequately protected if only “television drama” is to be excluded from the scope of the suspension. These television companies have suggested that all television programmes should be included in the scope of clause 2(2)(b) because while some non-drama television programmes are not “information” programmes, considerable resources have been invested for their production. They consider that inclusion of all television programmes in clause 2(2)(b) would not cause inconvenience to the public as television stations have already provided authorization mechanism for persons and organizations that have a need to record these programmes. For example, educational establishments may record television programmes for the purposes of instruction under the permitted acts of the Copyright Ordinance.

19. The Administration however maintains that the current scope of clause 2(2) is appropriate because the original intent of the Bill is to address the worries of business enterprises and educational establishments about the possibility of incurring criminal liabilities when making timely copies of the copyright works including television programmes for information dissemination and educational purposes. Excluding all television programmes from the suspension will defeat this purpose. Furthermore, as the Bill has not made any amendments to the criminal provisions of the Copyright Ordinance which already existed before the commencement of the amending Ordinance, it is still an offence, after the

enactment of the Bill, if a person unlawfully records any non-drama television programmes for sale.

20. In response to the Bills Committee's suggestion that the expression "that has been published or intended to be published in Hong Kong or elsewhere" in clauses 2(2)(a) and (b) is not particularly meaningful, the Administration concurs that the removal of this expression will not cause any confusion. It will propose a CSA to delete the expression.

Visual or audio recordings of music or songs

21. As regards the expression used to describe a film consisting of a musical work and any related literary work, the Bills Committee considers that the present description does not reflect accurately its intention to refer to the word "film" in clause 2(2)(c) to cover copyright works such as music TV and Karaoke discs. After deliberation, the Administration agrees to replace the term "substantial part" in clause 2(2)(c) with "predominant part" as the predominant parts of these films are music and songs (including melodies and lyrics). The Bills Committee notes that the Administration will also move a CSA to replace "或" with "及" in the Chinese version of clause 2(2)(c) to make it consistent with the English version.

Computer programs

22. In view of the difficulties faced by business enterprises and educational establishments in purchasing and using legitimate software after the commencement of the amending Ordinance, members have suggested that enterprises which use parallel-imported computer software should be exempted from criminal liabilities. In this respect, the Bills Committee notes that the Administration has taken on board members' suggestion and will move CSAs to achieve the effect that the use of legitimate copies of "parallel-imported" computer software in business will not constitute a criminal offence. For this purpose, the original clause 2(2)(d) will be replaced by new clauses 2A, 2B and 2C, to provide that only an infringing copy of a computer program in the following categories would be excluded from the suspension:

- (a) an infringing copy by virtue of sections 35(2) of the Copyright Ordinance;
- (b) an infringing copy by virtue of section 35(3) of the Copyright Ordinance and was not lawfully made in the country where it was made; and

- (c) an infringing copy by virtue of section 35(3) of the Copyright Ordinance and was made in a country where there is no or very low level of copyright protection.

In other words, since parallel imports are lawfully made overseas and therefore do not fall within the scope of the above categories, they are thus subject to suspension from criminal liabilities.

23. As regards the possibility of allowing parallel importation of computer software to promote market competition, the Administration has agreed, in principle, to relax the civil and criminal provisions relating to the parallel importation of computer software. The Bills Committee notes that the Administration is consulting various interested parties on this proposal with a view to introducing another bill into the Council shortly.

24. In response to the Bills Committee, the Administration also agrees to introduce a technical amendment under clause 2(2D) to cover under the suspension measures computer programs in a printed form and copies of computer programs associated with downloading of certain copyright works from the Internet for viewing and listening by members of the public.

Suspension approach

25. The Bills Committee notes that the Administration has adopted the suspension approach having taken into consideration the fact that one of the proposed measures that gained wide public support during the public consultation in 1999 was to strengthen the criminal provisions against copyright piracy in the course of business. A main objective of the amending Ordinance was to amend the Copyright Ordinance to implement this proposal. Furthermore, as the authorization regime of copyright works such as computer software and compact discs is relatively simple and clear and as the public awareness on protection of these products have been enhanced over the past few years, there are in general no difficulties encountered by the public in complying with the amending Ordinance as far as these products are concerned. The Administration also holds the view that the level of protection for these products in other jurisdictions is comparable to that in Hong Kong.

26. On the other hand, the Bills Committee notes the comments put forth by some deputations that the Bill should not accord different treatments to various types of copyright works. Others consider that there should not be criminalization of possession of infringing copies other than for the purposes of trade or business with a view to committing an infringing act. There is also concern that criminal sanctions imposed in Hong Kong in relation to copyright protection have gone

beyond what is required under the relevant international agreement. The amended Copyright Ordinance as it applies to computer programs is imposing too high a standard when compared with other jurisdictions including Taiwan, Korea and Singapore. Some members take the view that before these issues are properly addressed and before long-term and widely acceptable solutions can be identified, it would be prudent to suspend the application of the amending Ordinance to the criminal provisions in the Copyright Ordinance in relation to an infringing copy of all copyright works. These members also consider that an all-embracing suspension approach, which is technically simpler, would provide a direct and clear solution to address the concerns of the public as an interim measure.

Period of suspension

27. The Bills Committee welcomes the Administration's decision to include in the Bill an end date to the suspension. This arrangement will provide a clear timeframe for the Administration to conduct public consultation with a view to formulating long-term and acceptable solutions to address the problems relating to the implementation of the Copyright Ordinance.

28. The Bills Committee notes that the Administration has responded positively to the suggestion made by the Legal Adviser about the making of transitional provisions in the Bill to cover the enforcement and investigative actions in respect of copyright works which would be affected by the suspension of amendments during the period between 1 April and the enactment of the Bill. In the CSA to clause 2(1) and the new clause 2(2E) of the CSA, it provides that the Bill commences retroactively on 1 April 2001 to ensure that the provisions of the Bill will apply to cases currently under investigation.

Committee Stage Amendments

29. Apart from the CSAs to be moved by the Administration as explained above, the Bills Committee notes that the following Members will also propose CSAs to the Bill:

- (a) Hon Timothy FOK Tsun-ting will propose a CSA to clause 2(2)(b) of the Bill to include non-drama television programmes as one of the copyright works exempted from the suspension;
- (b) Hon Kenneth TING Woo-shou will propose a CSA to suspend all criminal provisions in relation to the importation of "parallel-imported" copies of computer software other than for private and domestic use;

- (c) Hon Margaret NG will move a CSA to suspend the operation of the amendments to sections 118 and 120 of the Copyright Ordinance effected by the amending Ordinance on all copyright works with effect on and from 1 April 2001.

30. The CSAs proposed by the Administration are attached at **Appendix III**.

Consultation with the House Committee

31. The House Committee at its meeting on 8 June 2001 supported the recommendation of the Bills Committee to resume the Second Reading debate on the Bill on 20 June 2001.

Council Business Division 1
Legislative Council Secretariat
15 June 2001

**Bills Committee on
Copyright (Suspension of Amendments) Bill 2001**

Membership list

Chairman Hon SIN Chung-kai

Members Hon Kenneth TING Woo-shou, JP
Hon Cyd HO Sau-lan
Hon Eric LI Ka-cheung, JP
Dr Hon LUI Ming-wah, JP
Prof Hon NG Ching-fai
Hon Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-yee, JP
Hon HUI Cheung-ching
Hon CHAN Kam-lam
Hon Howard YOUNG, JP
Dr Hon YEUNG Sum
Hon YEUNG Yiu-chung
Hon SZETO Wah
Hon Timothy FOK Tsun-ting, SBS, JP
Hon LAW Chi-kwong, JP
Hon Audrey EU Yuet-mee, SC, JP

(Total : 17 Members)

Clerk Mrs Florence LAM

Legal Adviser Miss Anita HO

Date 11 May 2001

**A Summary of views expressed by various deputations
on Copyright (Suspension of Amendments) Bill 2001**

<u>Types of Organizations</u>	<u>Summary of views</u>	<u>Remarks (Organizations concerned)</u>
Local and International Copyright Licensing Associations	<ul style="list-style-type: none"> ● Opposed the suspension of the amendments, and considered it a retrograde step which was contrary to the international standards of intellectual property protection. ● Stressed that the suspension of the amendments would lead to and encourage photocopying infringements, and prejudice the interests of copyright owners. ● Suggested that a grace period be explicitly provided to allow for the establishment of a licensing mechanism between copyright owners and users so as to meet the requirements of the legislation, and suggested that guidelines for the public concerning the legislation should be promulgated by the Administration . ● Opined that if the amendments were to be suspended, the copyright of the printed media and other broadcasting media (e.g. television, films, etc.) should be dealt with separately. 	<ul style="list-style-type: none"> ● International Federation of Reproduction Rights Organizations ● International Publishers Association ● Copyright Agency Limited ● The Copyright Licensing Agency Limited ● Authors' Licensing and Collecting Society Limited ● Hong Kong Reprographic Rights Licensing Association ● Hong Kong Publishing Federation Limited
Schools and Educational Associations	<ul style="list-style-type: none"> ● Generally supported the suspension of the amendments. Some schools even agreed to an all-embracing suspension of the Intellectual Property (Miscellaneous Amendments) Ordinance 2000. ● Pointed out that the criminal provisions in the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 concerning the reproduction of the printed media were unclear, in particular, the concept of "reasonable use" would cause confusion among teachers and affect the teaching and learning process. ● Suggested that proper exemptions should be granted to schools for the photocopying of newspapers, books and magazines for teaching purposes. 	<ul style="list-style-type: none"> ● The Hong Kong Professional Teachers' Union ● Caput Schools Council ● Grant Schools Council ● Hong Kong Private Schools Association Limited ● Hong Kong Subsidized Secondary Schools Council ● Hong Kong Special Schools Council

<p>Associations of Trade and Commerce</p>	<ul style="list-style-type: none"> ● Supported the suspension, and agreed that the setting of a suspension period would facilitate the proper treatment of issues relating to the liability for photocopying the printed media. ● Suggested that the “reasonable” photocopying of newspapers for the dissemination of information should not be made a criminal offence. ● Stressed that the implementation of the criminal provisions against the infringement acts of computer software and audio visual products piracy should continue. ● Encouraged the reaching of a prompt consensus on the establishment of a collective licensing mechanism among copyright owners in the industries. ● Supported relaxing the parallel importation of computer software products and exploring alternative software products to reduce operation costs and to provide small and medium-sized enterprises with more choices. 	<ul style="list-style-type: none"> ● Hong Kong General Chamber of Commerce ● Federation of Hong Kong Industries
<p>Television Broadcasting Organizations</p>	<ul style="list-style-type: none"> ● Mostly supported the suspension of amendments and conducting extensive consultations to explore long term solutions. ● Stressed that all television programmes were copyright articles, and should be accorded the same level of copyright protection. Thus, television programmes referred to in the exceptions in the Copyright (Suspension of Amendments) Bill 2001 should include different kinds of television programmes such as documentary series, public affairs programmes and entertainment programmes. All these television programmes have high commercial value. 	<ul style="list-style-type: none"> ● Television Broadcasts Limited ● Asia Television Limited ● Hong Kong Cable Television Limited ● Galaxy Satellite Broadcasting Limited ● Star Group Limited ● YES Television(Hong Kong)Limited
<p>Professional Bodies(the accounting and legal sectors)</p>	<ul style="list-style-type: none"> ● Supported the suspension in principle, and considered that a comprehensive review of the relevant legislation should be conducted to explore long term solutions. ● Suggested that the implications of the amendments should be examined carefully in view of the extended criminal liability in the Copyright Ordinance, as effected by Intellectual Property (Miscellaneous Amendments) Ordinance 2000. 	<ul style="list-style-type: none"> ● Hong Kong Society of Accountants ● The Hong Kong Bar Association ● The Law Society of Hong Kong

Associations of the newspaper industry	<ul style="list-style-type: none"> ● Supported the suspension of the amendments. ● Agreed that problems concerning the copyright licensing of newspaper photocopying should be resolved by way of a collective licensing mechanism of the industries. ● The newspaper industry would make efforts in providing a clear definition concerning the scope of the “reasonable use” of the newspaper. 	<ul style="list-style-type: none"> ● The Newspaper Society of Hong Kong ● Hong Kong News Clipping Industry Working Committee
Societies/ Organizations of Audio Visual Products	<ul style="list-style-type: none"> ● Agreed that a flexible approach should be adopted in dealing with issues concerning copyright, and acknowledged that different copyright articles should be dealt with separately. ● Supported partially suspending the criminal provisions in the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 concerning the reproduction of the printed media. 	<ul style="list-style-type: none"> ● Hong Kong, Kowloon & New Territories Motion Picture Industry Association Limited ● International Federation of the Phonographic Industry(Hong Kong Group)Limited ● Blockbuster Hong Kong Limited ● ERA Home Entertainment Limited
Associations/ Organizations of the Computer software industry	<ul style="list-style-type: none"> ● Generally supported the Intellectual Property (Miscellaneous Amendments) Ordinance 2000, and opposed the broadening of the scope of suspension to include computer software products, and believed that if the copyright legislation concerning computer software products was suspended, the combat against copyright infringement acts would be undermined, which was contrary to the international standards of intellectual property protection, and would thus tarnish the reputation of Hong Kong. ● Mostly had reservation about the parallel importation of computer software products, and believed that it would affect the interests of local software product retailers, and that there would be insufficient technical support. 	<ul style="list-style-type: none"> ● Business Software Alliance ● Interactive Digital Software Association ● PacRim Technologies Limited ● Senco-mass Link Technology Limited

Other Organizations	<ul style="list-style-type: none">● Supported the suspension of the amendments.● Considered that while the intellectual property of newspapers should be respected, it has to be balanced against the interests of copyright owners and the community so as to avoid obstructing the information flow and creating barriers in teaching.● Hong Kong Development and Strategic Research Centre supported an all-embracing suspension approach, and wished that the Administration would consider the effects of the reproduction of the printed newspapers, books and magazines on the teaching process, so as to balance the interests of copyright owners against those of the educators.● Yau Tsim Mong District Council considered that the government was over-protecting the intellectual property, and pointed out that the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 would hamper the extensive transmission of knowledge, and would catch the general public unaware. The Council also considered that the existing Customs and Excise Service Ordinance and the Trade Marks Ordinance could adequately combat piracy, rendering the criminalization of infringement acts unnecessary.	<ul style="list-style-type: none">● Hong Kong Christian Council● Hong Kong Public Relations Professionals' Association Limited● Hong Kong Development and Strategic Research Centre● Yau Tsim Mong District Council
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COPYRIGHT (SUSPENSION OF AMENDMENTS) BILL 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

Amendment Proposed

(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

Clause

Amendment Proposed

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

Amendment Proposed

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) -

- (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

Clause

Amendment Proposed

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

Amendment Proposed

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".