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**Paper for the House Committee meeting
on 4 May 2001**

**Report of the Subcommittee
on the draft Copyright (Suspension of Amendments) Bill 2001**

Purpose

This paper reports on the deliberations of the Subcommittee on the draft Copyright (Suspension of Amendments) Bill 2001.

Background

2. The Intellectual Property (Miscellaneous Amendments) Ordinance 2000 (the amending Ordinance) was passed by the Council in June 2000. It amends the Copyright Ordinance, among other things, to strengthen the criminal provisions against copyright piracy in business. The amending Ordinance has replaced 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. As a result of the amendment, any person who knowingly possesses an infringing copy of a copyright work in the course of any trade or business will commit a criminal offence. According to the Administration, the term “business” as used in the Copyright Ordinance is not confined to commercial activities. It can also cover educational, charitable or government activities. An infringing copy may include a pirated computer program, an unauthorized photocopy of a newspaper article, an unauthorized recording of a television programme, or an electronic copy or hardcopy of a copyright work downloaded from the Internet without the authorization of the copyright owner. The amending Ordinance came into effect on 1 April 2001.

3. Implementation of the amending Ordinance has given rise to much concern and discussions within the community in particular with regard to the

photocopying of newspaper and the use of such materials in business enterprises and schools. The main concern of the business community is that the threat of criminal proceedings and the absence of a convenient mechanism to obtain the required authorization have hampered the dissemination of information in enterprises. The education sector is concerned that teachers may incur criminal liability inadvertently as they routinely make multiple copies of copyright works contained in newspapers, magazines or books, as well as works downloaded from the Internet or recorded from radio or television broadcasts, for classroom use. Whilst the Copyright Ordinance has already provided exemptions for educational copying under specified circumstances, teachers remain worried because these exemptions are subject to the condition that copying must be done within a “reasonable extent”, which is not clearly defined in the Copyright Ordinance.

4. To address the concerns of the public, the Secretary for Commerce and Industry announced at the meeting of the LegCo Panel on Commerce and Industry on 12 April 2001 that the Government would introduce legislative amendments, 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 some exceptions. These exceptions include computer programs, visual or audio recordings or music or songs, television dramas and movies.

The draft Bill

5. The first draft of the Copyright (Suspension of Amendments) Bill 2001 (the suspension Bill) was considered at the meeting of the Panel on Commerce and Industry on 19 April 2001. While the Panel supported the introduction of the suspension Bill in principle, members had reservations about the fast-track legislative process proposed by the Administration as the legal and drafting aspects of the draft Bill would need to be further considered. Under such circumstances, the Panel recommended to the House Committee that a subcommittee should be formed to study the draft Bill in detail.

The Subcommittee

6. Members agreed at the House Committee meeting on 20 April 2001 to form a subcommittee to study the draft Bill. Under the chairmanship of Hon SIN Chung-kai, the Subcommittee held two meetings on 25 April and 3 May 2001 respectively to consider the revised draft Bill submitted by the Administration. The membership list of the Subcommittee is at **Appendix I**.

Deliberations of the Subcommittee

7. The Subcommittee notes that instead of setting out the categories of the copyright works as listed in paragraph 4 above, the Administration has adopted a different approach for the revised draft Bill (in **Appendix II**). The revised draft Bill sets out that the suspension should apply to all copyright works except computer programs, sound recordings or films the whole or a substantial part of which consists of a musical work and any related literary work, television dramas and movies. The suspension will mean that subject to these exceptions, the key criminal provisions with respect to all copyright works in the Copyright Ordinance will revert to the position before the commencement of the amending Ordinance. However, the suspension will not affect the civil remedies available to copyright owners in respect of any copyright works.

8. The Subcommittee also notes that the Administration has taken into account the concern of the Panel on Commerce and Industry about the absence of an end date to the suspension in the first draft of the Bill. The revised draft proposes that the suspension should end on 31 July 2002, but it may be changed by the Secretary for Commerce and Industry by a notice published in the Gazette and with the approval of the Legislative Council. The Subcommittee supports the revision of the draft Bill in this regard.

9. Some members, however, consider that amendments contained in the amending Ordinance which affected the civil provisions in the Copyright Ordinance should also be suspended because all copyright works should be treated equally and should be given the same level of protection under the law. The Administration remains of the view that the approach of the suspension Bill would be appropriate as an interim measure. It has also been pointed out that the works excluded from the suspension generally have substantial commercial value and are not normally “information” disseminated in enterprises or schools. Moreover, piracy of these works in Hong Kong and elsewhere is rampant. Therefore, the amending Ordinance, which has the effect of providing a higher level of protection, should continue to apply to them. In this connection, the Administration has undertaken to consult non-governmental organizations, the copyright industry, and various sectors of the

community after the enactment of the Bill with a view to formulating a long-term solution to the problem. Another Bill will then be introduced to make further amendments to the law.

10. To facilitate further discussions on the Bill, the Administration has been asked to provide the Subcommittee with the following documents:

- (a) a FAQ setting out the circumstances under which the possession or use of infringing works, in particular software programs and works downloaded from the Internet, would or would not attract civil or criminal liability after the enactment of the Copyright (Suspension of Amendments) Bill 2001;
- (b) a list setting out the specific acts of infringement covered by the expression "for the purpose of, in the course of, or in connection with, any trade or business" in the relevant sections of the Copyright Ordinance. Examples of such acts and those acts not covered by the expression should be provided;
- (c) a paper setting out the problems, including those relating to the dissemination of information, faced by the various sectors of the community after the implementation of the Intellectual Property (Miscellaneous Amendments) Ordinance 2000;
- (d) a paper setting out the impact of the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 on small and medium enterprises (SMEs) and the measures to be taken to assist those SMEs which have difficulties in complying with the law;
- (e) a paper setting out the Administration's plans for consulting the various sectors of the community on the long-term solutions to the problems identified, and the timing and scope of the consultation exercise;
- (f) a paper explaining the legality of offering "downgrade rights" to computer users, as proposed by the Business Software Alliance in its submission to the Bills Committee dated 27 April 2001; and
- (g) a paper setting out the existing arrangements relating to "parallel import" and the Government's views on how this could be relaxed.

Recommendation

11. The suspension Bill was introduced into the Legislative Council on 2 May 2001. In the light of this development, the Subcommittee recommends that a Bills Committee should be formed to continue the deliberations on the Bill.

Advice sought

12. Members are invited to endorse the recommendation of the Subcommittee.

Council Business Division 1
Legislative Council Secretariat
7 May 2001

**Subcommittee on
the draft Copyright (Suspension of Amendments) Bill 2001**

Membership list

Chairman	Hon SIN Chung-kai
Members	Hon Kenneth TING Woo-shou, JP Hon James TIEN Pei-chun, JP Hon Cyd HO Sau-lan Prof Hon NG Ching-fai Hon Margaret NG Hon Mrs Selina CHOW LIANG Shuk-ye, JP Hon HUI Cheung-ching Hon CHAN Kam-lam Hon Howard YOUNG, JP Hon YEUNG Yiu-chung Hon CHOY So-yuk Hon Timothy FOK Tsun-ting, SBS, JP Hon LAW Chi-kwong, JP Hon Audrey EU Yuet-mee, SC, JP (Total : 15 Members)
Clerk	Mrs Florence LAM
Legal Adviser	Mr Jimmy MA Miss Anita HO
Date	26 April 2001

Draft

A BILL

To

Provide for the suspension of the operation of certain amendments to the Copyright Ordinance effected by the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 (64 of 2000).

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Copyright (Suspension of Amendments) Ordinance 2001.

2. Suspension of amendments

(1) Subject to subsection (2), with effect on and from the commencement of this Ordinance, sections 118 and 120 of the Copyright Ordinance (Cap. 528) shall be read as if the amendments effected by sections 2 to 7 and 9 to 18 of the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 (64 of 2000) had not been enacted.

(2) Subsection (1) does not apply in relation to an infringing copy of any of the following works -

- (a) a film commonly known as a movie and that has been published or is intended to be published in Hong Kong or elsewhere;
- (b) a film commonly known as a television drama and that has been published or is intended to be published in Hong Kong or elsewhere;

- (c) a sound recording or film the whole or a substantial part of which consists of a musical work and any related literary work; or
- (d) a computer program (excluding a computer program in a printed form).

(3) The terms and expressions used in this section have the same meaning as in Part II of the Copyright Ordinance (Cap. 528).

3. Lifting of suspension

(1) Section 2 shall cease to have effect on 31 July 2002.

(2) The Secretary for Commerce and Industry may, by notice published in the Gazette before the date specified in subsection (1), amend that subsection by substituting for that date such date as is specified in the notice.

(3) A notice under subsection (2) shall be subject to the approval of the Legislative Council.

(4) It is hereby declared that a notice under subsection (2) is subsidiary legislation.

Explanatory Memorandum

Sections 2 to 7 and 9 to 18 of the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 (64 of 2000) replaced 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” in sections 31, 32, 95, 96, 109, 118, 120, 207, 211, 228 and 273 of the Copyright Ordinance (Cap. 528) and made other related amendments. This Bill will suspend the operation of those

amendments insofar as they relate to the offences in sections 118 and 120 of the Copyright Ordinance (Cap. 528), subject to certain exceptions.

2. Clause 2(1) provides that, subject to clause 2(2), sections 118 and 120 of the Copyright Ordinance (Cap. 528) shall be read as if the amendments effected by sections 2 to 7 and 9 to 18 of the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 (64 of 2000) had not been enacted.

3. Clause 2(2) provides that clause 2(1) does not apply in relation to an infringing copy of a movie, television drama, sounding recording or computer program as described in that clause.

4. Clause 3 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 with the approval of the Legislative Council.