

立法會
Legislative Council

LC Paper No. LS 58/00-01

**Paper for the House Committee Meeting of the
Legislative Council
on 16 February 2001**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 9 February 2001**

Date of Tabling in LegCo : 14 February 2001

Amendment to be made by : 14 March 2001 (or 28 March 2001 if extended by resolution)

Prevention of Copyright Piracy Ordinance (Cap. 544)
Prevention of Copyright Piracy (Notices) Regulation (L.N. 39)

The Intellectual Property (Miscellaneous Amendments) Ordinance 2000 (Ord. No. 64 of 2000) was passed by this Council in June 2000. It amends the Prevention of Copyright Piracy Ordinance (Cap. 544) (the Ordinance). Under the new section 31E of the Ordinance, the manager of a place of public entertainment is required to display notices to the effect that the unauthorized possession of video recording equipment in that place is prohibited. Those notices shall be in the prescribed form and include the prescribed statements. This Regulation makes provisions relating to the form of and the statements to be included in the notices and the locations in which the manager is required to display the notices.

The notice made by this Regulation prescribes that "(I)t is an offence to bring video recording equipment into a cinema, theatre or concert hall without the express consent of the manager.". We are seeking clarifications from the Administration on whether such statement reflects fully the effect required of it by section 31E of the Ordinance and we have also raised queries with the Administration on some other drafting aspects of the Regulation. We would make a further report upon receipt of the Administration's reply.

Members may refer to the LegCo Brief (no reference number indicated) issued by the Commerce and Industry Bureau in February 2001 for background information. This Regulation shall come into effect on 1 April 2001.

Commodities Trading Ordinance (Cap. 250)
Commodities Trading (Trading Limits and Position Limits) (Amendment) (No. 2)
Rules 2001 (L.N. 40)

The Securities and Futures Commission (the Commission) is empowered under section 59 of the Commodities Trading Ordinance (Cap.250) (the Ordinance) to fix the trading and position limits of futures or options contracts which may be held by any person in respect of a specified commodity. The Commission may amend the Schedule to the Commodities Trading (Trading Limits and Position Limits) Rules (Cap. 250 sub. leg.). This is the second amendment to that Schedule this year. Two new contracts, namely the MSCI China Free Index futures contract and the MSCI China Free Index options contract are added to the Schedule.

Any person who trades or holds contracts in excess of the specified limit commits an offence and is liable on conviction upon indictment to a fine of \$10,000 and to imprisonment for 6 months (section 65 of the Ordinance).

Members may refer to the LegCo Brief (no reference number indicated) issued by the Commission dated 7 February 2001 for background information. These Rules will come into operation on 30 March 2001.

The legal and drafting aspects of these Rules are in order.

Prepared by

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Assistant Legal Adviser
Legislative Council Secretariat
12 February 2001

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12 February 2001

Secretary for Commerce and Industry
(Attention: Mr. Philip CHAN,
Prin. Assistant Secretary (5))
Commerce and Industry Bureau
Level 29 One Pacific Place
88 Queensway
Hong Kong

Dear Mr. Chan,

**Prevention of Copyright Piracy (Notices) Regulation
(L.N. 39 of 2001)**

I am scrutinizing the drafting and legal aspects of the above Regulation gazetted on 9 February 2001 with a view to advise Members and to prepare a report to the House Committee on 16 February 2001. I would be grateful if you could clarify the following -

Regulation 3

2. "The manager of a place of public entertainment shall display the notices referred to in section 2 in such locations outside that place as will ensure that such a notice may be readily seen and read by any person entering that place." Should "such notice" be used instead of "such a notice" to avoid the confusion as to whether the singular or plural form of the word "notice" should be used?

3. The emphasis of the English version is that the notices should be in locations which may be readily seen and read by any person entering a place of public entertainment. However, in the Chinese version, it states as "展示位置的數目須能確保進入該場所的人能輕易看見和閱覽該告示". How can "the number of locations" (展示位置的數目) ensure that such notices be readily seen and read by any person entering that place? Should the subject be still "the manager"? May I suggest the following version -

"公眾娛樂場所的管理人須在該場所外面一個或多個位置展示第2條所指的告示，並須確保進入該場所的人能輕易看見和閱覽該告示".

Schedule

4. In the Heading, should the word "the" be added before the word "Ordinance" so that it reads as "under section 31E of the Ordinance" and not "section 31E of Ordinance"?

5. Is it prescribed that even in the English version of the Schedule, the Chinese version should be stated first?

6. Section 31E of the Prevention of Copyright Piracy Ordinance specifies that

"The manager of a place of public entertainment shall display and keep displayed notices, in English and Chinese, to the effect that the unauthorized possession of video recording equipment in that place is prohibited, which notices shall be in the prescribed form and include the prescribed statements."

The notice now prescribes the following statement:

"It is an offence to bring video recording equipment into a cinema, theatre or concert hall without the express consent of the manager."

7. Has this statement reflected fully the effect required of it by section 31E? The offence of unauthorized possession of video recording equipment in a place of public entertainment covers more scenarios than merely bringing video recording equipment into a cinema, theatre or concert. Say, a person who is found in a cinema, theatre or concert hall with video recording equipment is guilty of an offence under section 31C. Further, a person who is found bringing a video recording equipment out a cinema, theatre or concert hall should also be guilty of such offence. Personally I do not think that this statement has achieved the effect of giving notice that "unauthorized possession of video recording equipment in a place of public entertainment is prohibited". This Regulation might be held to be inconsistent with the Ordinance. Further, would the public be misinformed by this warning notice of the full effect of this law?

I would appreciate it if you would let me have your reply in both English and Chinese as soon as possible.

Yours sincerely,

(Anita Ho)
Assistant Legal Adviser

c.c. Department of Justice (Attn: Mr. Vidy Cheung, SGC)
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