

立法會

Legislative Council

LC Paper No. LS 90/00-01

**Paper for the House Committee meeting
of the Legislative Council on 4 May 2001**

**Legal Service Division Report on
Copyright (Suspension of Amendments) Bill 2001**

Object of the Bill

To suspend the operation of certain amendments to the Copyright Ordinance (Cap. 528) (the Ordinance) effected by the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 until 31 July 2002.

Legislative Council Brief

2. CIB 09/46/12 issued by the Commerce and Industry Bureau on 26 April 2001.

Date of First Reading

3. 2 May 2001.

Background

4. The Ordinance was enacted on 27 June 1997. Most of the provisions of the Ordinance were modelled on the U.K. Copyright, Designs and Patents Act 1988.

5. In January 2000, the Administration introduced the Intellectual Property (Miscellaneous Amendments) Bill 2000 (the Amendment Bill) into this Council to enhance the protection of intellectual property rights in Hong Kong.

6. One of the proposals in this Amendment Bill was to repeal the expression "for the purpose of trade or business" and to substitute it with the expression "for the purpose of, in the course of, or in connection with, any trade or business" in certain provisions of the Ordinance. The Bill was passed into an Ordinance (the Amendment Ordinance) on 27 June 2000.

7. By L.N. 46 of 2001 published in the Gazette on 16 February 2001, the Secretary for Commerce and Industry appointed 1 April 2001 as the day on which the Amendment Ordinance should come into operation.

8. After commencement of the Amendment Ordinance, the Administration realized that certain criminal provisions in the Ordinance had caused worries and inconvenience to the community. As an interim measure, the Administration proposed to suspend the application of the Amendment Ordinance to the criminal provisions in the Ordinance subject to certain exceptions. A first draft Bill was submitted to the Panel on Commerce and Industry for consideration on 19 April 2001. The chairman of the Panel made a verbal report to the House Committee on 20 April 2001 and the House Committee decided to form a Subcommittee to scrutinize the draft Bill. A second version of the draft Bill was submitted to the Subcommittee on 25 April 2001. On 27 April 2001, this Bill which was the version of the second draft Bill was gazetted.

Comments

A broad legal framework of the Ordinance

9. Under section 2 of the Ordinance, copyright is a property right which subsists in the following works -

- (a) original literary, dramatic, musical or artistic works;
- (b) sound recordings, films, broadcasts or cable programmes; and
- (c) the typographical arrangement of published editions.

10. An author or a director is usually the first owner of any copyright.

The duration of a copyright work usually expires at the end of 50 years from the end of the year in which the author dies. A copyright owner of a copyright work has the exclusive right to copy, perform, broadcast, make an adaptation of the copyright work and to issue, rent, make available copies to the public (section 22 of the Ordinance).

11. Copyright in a work is infringed by a person who without the licence of the copyright owner does any of the acts restricted by the copyright. A copyright owner can take civil action against an infringer (section 107). A person who without the licence of the copyright owner, makes, sells, distributes, imports, exports, possesses or deals with an infringing copy, provides means for making infringing copies, provides apparatus for infringing performance may infringe copyright indirectly. Criminal liability may be incurred under section 118 unless he can prove that he did not know and had no reason to believe that the copy in question was an infringing copy. If a person makes infringing copies outside Hong Kong for export to Hong Kong, he may commit a criminal offence under section 120.

12. Sections 37 to 88 of the Ordinance specify acts which may be permitted in relation to copyright works, notwithstanding the subsistence of copyright. There are other provisions in the Ordinance providing for moral rights of the authors and directors, dealings with rights in copyright works, legal proceedings relating to copyright, copyright licensing, the Copyright Tribunal and rights in performance.

This Bill

13. There are three clauses in this Bill. Clause 1 relates to the short title of the Bill. Clause 2(1) provides that, subject to the exceptions in Clause 2(2), sections 118 and 120 of the Ordinance shall be read as if the amendments effected by the Amendment Ordinance (except the amendment by section 8 of the Amendment Ordinance which is a section amending section 119 and is not an amendment on the expression "for the purpose of trade or business") had not been enacted.

14. Clause 2(2) lists out the four categories of work as exceptions, i.e. 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 program.

15. 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 this Council.

16. Unlike other amending ordinances, textual amendments are not made to sections 118 and 120. Readers will have to place this Ordinance, if passed, along with the existing Ordinance in order to understand the law.

17. If this Bill is enacted, in relation to all copyright works (other than the four categories of work specified in Clause 2(2)), the expression "for the purpose of trade or business" will in effect be reinstated in section 118(1)(d), (e), (f), (4), (5) and (8) and section 120(2). For all other sections, the amendments effected by the Amendment Ordinance will remain in force.

18. The legal effect of this Bill, in general terms, would be that for sections 118 and 120, they would carry their respective meaning before the commencement of the Amendment Ordinance for most of the copyright works, except the four categories of work. Civil sanctions in respect of all copyright works would continue in accordance with the Amendment Ordinance.

Public Consultation

19. Submissions were received from various deputation to the Panel on Commerce and Industry on 12 and 19 April 2001 and to the Subcommittee on 25 April 2001 respectively (see LC Paper No. CB(1)1004/00-01(01) to (07), LC Paper No. CB(1)1050/00-01(01) to (05), and CB(1)1110/00-01(03) to (05)). Some of the deputation such as the International Federation of Reproduction Rights Organisations, International Publishers Association, Copyright Agency Limited, Hong Kong Reprographic Rights Licensing Society, Cable TV objected to the suspension of criminal provisions on their copyright work. Other deputation expressed other concerns.

Consultation with the LegCo Panel

20. A meeting of the Panel on Commerce and Industry was held on 9 April 2001 and two special meetings were held on 12 and 19 April 2001 to discuss issues relating to the draft Bill. After the setting up of a Subcommittee by the House Committee on 20 April 2001, members of the Subcommittee had held two meetings with the Administration on 25 April 2001 and 3 May 2001.

Conclusion

21. Based on the first draft Bill submitted to the Panel on Commerce and Industry, the Legal Service Division had raised some queries with the Administration on its legal and drafting aspects. We are still awaiting a reply. During the House Committee meeting on 20 April 2001, members had already agreed that upon the formal introduction of the Bill into LegCo, a Bills Committee should be formed to take over the work of the Subcommittee.

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