

Rash amendment akin to 'vandalism'



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WHEN THE INTELLECTUAL property (Miscellaneous Amendments) Bill 2000 was introduced into the Legislative Council last year, it was described as merely "clarifying" existing provisions in the Copyright Ordinance. The bill was rushed through and from the records, there was scant appreciation at that time of its true legal effect.

That effect was revealed all too dramatically when the ordinance came into force on April 1. Sud-

denly, to the shock of the community, government officials and legislators alike, photocopying a newspaper article and displaying it in one's shop window or circulating it among one's colleagues could be a criminal offence.

How can such acts be considered criminal? Yet this is clear from the wording of the amended Copyright Ordinance: "A person commits an offence if he, without the licence of the copyright owner ... for the purpose of, *in the course of, or in connection with*, any trade or business ... exhibits in public; or ... distributes ... an infringing copy of a copyright work."

What did the mischief was adding the italicised words to the original Copyright Ordinance. It is one thing to prohibit the exhibition or distribution of infringing copies

"for the purpose of trade or business". That is narrow and concrete enough for a conscientious person to comply with. It is quite another to widen the prohibition to "in the course of, or in connection with any trade or business". That is far too burdensome and cannot be justified as legitimate protection of copyright.

The Government should never have introduced such legislation, and Legco should never have passed it. Whatever the reason for not having properly applied our minds to it, everyone concerned, including myself, was at fault. What is now required is not just apologies but to put things right without delay. There must be no question of blindly enforcing these criminal provisions.

But the lesson must be learned. First, the fiasco has arisen out of an all-too-cavalier attitude towards widening criminality in order to make prosecution easier, on the assumption the law will be enforced selectively and only against the really wicked. The present fiasco is not the only instance; this unprincipled approach is a growing trend.

Second, there was insufficient scrutiny. To be fair to Legco, it was not a case of lack of diligence; the Bills Committee met three times in less than a month at a time when the legislative workload was particularly heavy. Rather, it was allowing a wish to be co-operative to take precedence over an objective judgment of the amount of scrutiny required.

Third, there was a failure to appreciate the true effect of the legislation because consultation before and after enactment was not rigorous or wide enough. This resulted in potential problems not being discovered in time.

Bearing these lessons in mind, the Government's hurried response - proposing a new Copyright (Suspension of Amendments) Bill that would selectively suspend the ill-fated amendments with respect to certain categories of copyrighted works - and pressure on Legco to pass this without due scrutiny are the worst kind of pan-

ic reaction. No sound criteria for singling out certain categories of works have been put forward. This makes it possible that other problems outside the proposed bill might crop up. In fact, the categories as proposed are not even defined in the draft bill.

Further, the panic reaction and the rushed proposal have alarmed copyright-protection organisations in the singled-out categories. They have pointed out that the Government has sent a strong signal to the world that Hong Kong is serious about protecting the copyrights of the powerful software companies but not of the less-powerful groups, such as writers and publishers. This can do irreparable damage to Hong Kong's reputation.

In anticipation of the bill being finalised and formally introduced, Legco has already formed a committee to deal with the matter and it is scheduled to hold its first meeting tomorrow.

The Copyright Ordinance passed in 1997 was a comprehensive and complex piece of legislation intended to ensure Hong Kong met its international-treaty obligations. It brought about greater social awareness of the level of copyright protection expected in a modern civil society. Inevitably, there would be a process of adaptation.

The Bills Committee and the officials involved made enormous efforts to ensure the right balance was struck between protection of copyright and public freedoms, including freedom of information, and that the balance was fully and accurately reflected in the legislation. The balancing exercise, as well as the scrutiny of the drafting was at times taxing and difficult. The Bills Committee consulted widely and systematically. The resulting Copyright Ordinance was not perfect. Improvements should be welcome, but rash amendments are no better than vandalism. They can inadvertently set Hong Kong back.

Legco should look at the strong public reaction to the recent amendments dispassionately - separate the consequences of requiring people to change certain habits without sufficient warning and allowance from what is really wrong with the law. It should make use of the exercise to make up for the consultation and public education it should have done before. Only this way can it make adequate reparation and ensure the end product is just, acceptable to the community, and compatible with the public interest.

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