

立法會
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**Subcommittee on
Prevention of Copyright Piracy (Notices) Regulation**

**Minutes of meeting held on
Friday, 23 February 2001, at 10:45 am
in the Chamber of the Legislative Council Building**

Members present : Hon Timothy FOK Tsun-ting, SBS, JP (Chairman)
Hon Kenneth TING Woo-shou, JP
Hon HUI Cheung-ching
Hon CHAN Kam-lam
Hon Henry WU King-cheong, BBS

Members absent : Hon SIN Chung-kai
Hon CHOY So-yuk

Public officers attending : Commerce and Industry Bureau

Mr Philip CHAN
Principal Assistant Secretary

Miss Laura TSOI
Assistant Secretary

Department of Justice

Mr Vidy CHEUNG
Senior Government Counsel

Intellectual Property Department

Miss Pancy FUNG
Assistant Director

Customs and Excise Department

Mr Vincent POON
Assistant Commissioner

Clerk in attendance : Mrs Florence LAM
Chief Assistant Secretary (1)4

Staff in attendance : Miss Anita HO
Assistant Legal Adviser 2

Ms Erin TSANG
Senior Assistant Secretary (1)3

I. Election of Chairman

Nominated by Mr Henry WU and seconded by Mr HUI Cheung-ching, Mr Timothy FOK was elected Chairman of the Subcommittee on Prevention of Copyright Piracy (Notices) Regulation (the Subcommittee).

II. Meeting with the Administration

(The Legislative Council Brief on the Prevention of Copyright Piracy (Notices) Regulation, the Legal Service Division Report (LC Paper No. LS 58/00-01) and Members' brief (CB(1) 640/00-01(01))

General introduction

2. At the invitation of the Chairman, the Principal Assistant Secretary for Commerce and Industry (PAS/C&I) briefed members on the salient points in the Prevention of Copyright Piracy (Notices) Regulation (the Regulation) set out in the Legislative Council Brief. He highlighted the fact that proof of unauthorized recordings was difficult as the act often took place in a darkened environment such as cinemas. It was also difficult to prosecute bootleggers who might claim that the recording was not made for sale or hire but merely for private or domestic use. Accordingly, to prevent bootlegging of copyright works, the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 (Ord. No. 64 of 2000), which was passed by the Legislative Council in

June 2000, amended the Prevention of Copyright Piracy Ordinance (Cap. 544) (the Ordinance) to make it an offence for any person who, without lawful authority or reasonable excuse, had in his possession any video recording equipment in a place of public entertainment such as cinemas, theatres or concert halls. To ensure that the public would not be caught unawares, a series of publicity measures had been implemented before the commencement of the new law on 1 April 2001 including, inter alia, the display of warning notices at the relevant places of public entertainment. The Regulation sought to prescribe the form of, and the statements to be included in, the notices displayed by the manager of a place of public entertainment (the manager), and the manner and locations for displaying such notices.

Legislative intent and administration of the new provisions

3. Noting that consent could be sought from the manager for possession of video recording equipment in a place of public entertainment under section 31C(3) of the Ordinance, Mr CHAN Kam-lam questioned the intent of allowing the manager such discretion as it might lead to unnecessary arguments on whether lawful authority had actually been given. In response, PAS/C&I explained that some flexibility had to be provided to cater for situations, such as school performances, where video recording (e.g. by parents) could be permitted with the consent of the manager. Nevertheless, should any dispute arise on whether lawful authority had been given by the manager, the court would make a judgement on the facts of the case and the evidence produced.

4. In response to Mr Henry WU's enquiry, PAS/C&I explained that the term "manager" referred to the person who was responsible for the control or management of a place of public entertainment at the material time. Therefore, one could approach, say, ushers of those places for consent as and when necessary.

5. With reference to the term "video recording equipment", Mr Henry WU opined that the term "audio visual recording equipment" should be used in order to provide more comprehensive coverage of different kinds of recording equipment available in the market. In reply, PAS/C&I said that legal advice had already been sought on the issue. In view of the rapid technological advancement, it was considered more desirable to adopt a generic term. The term "video recording equipment" was defined in the Ordinance as "any device that is capable of making a recording, on any medium, from which a moving image may by any means be produced or that may enable such recordings to be made, either in the same place at which it is used, or by electronic or other transmission at another place." In this connection, PAS/C&I advised that since digital cameras could record moving images, they would come within the meaning of video recording equipment as referred to in the provision whereas photographic cameras were exempted from the prohibition.

6. As video recording equipment, such as digital cameras, had become so common that it virtually formed part of the everyday life of the general public, the Chairman urged the Administration to enforce the new law in a reasonable manner. Otherwise, it would become a draconian law and would do more harm than good to the community. PAS/C&I took note of the Chairman's concern and assured members that the new law was aimed at preventing bootlegging of copyright works rather than causing inconvenience to the public. He also pointed out that a new provision had been incorporated in the Ordinance to allow members of the public to put up a defence on the basis of having a reasonable excuse for possessing video recording equipment in those places of public entertainment. In addition, various publicity measures would be undertaken so as to ensure that the public, especially tourists, were well aware of the new provision. These included announcements over radio and TV, uploading frequently asked questions and answers on the Internet, as well as putting up posters and distributing pamphlets to the general public (including tourists). Apart from the display of warning notices as prescribed by the law, the Hong Kong Theatres Association had also asked its members to adopt other supporting measures, such as putting up posters, distributing pamphlets and relaying warning messages to those who purchased tickets via telephone or the Internet. Moreover, storage facilities would also be made available for the deposit of video recording equipment where necessary. In response to Mr Henry WU's enquiry, PAS/C&I confirmed that APIs would also be shown in cinemas and announcements be made in theatres and concert halls to draw the audience's attention to the prohibition. As to Mr WU's suggestion of printing the warning statement on the tickets, PAS/C&I said that as the various publicity measures to be adopted should be sufficient and effective, the Administration considered that it was not necessary to add the warning statement in the tickets.

7. Noting that substantial profits could be generated from the bootlegging of copyright works, Mr HUI Cheung-ching was concerned that the level of punishment inflicted on bootleggers was not sufficiently severe to achieve adequate deterrent effect. PAS/C&I explained that since it was necessary to strike an appropriate balance between the deterrent effect to be achieved and the level of penalty to be inflicted, an offender would be liable for a maximum fine of \$5,000 on a first conviction. On a second and subsequent conviction, however, the offender would be subject to a fine of \$50,000 and three months' imprisonment. On Mr HUI's further enquiry regarding the enforcement of the new provision, the Assistant Commissioner of Customs and Excise advised that the Customs and Excise Department had already devoted more manpower to combat the infringement of copyright works in recent years, and that there should be sufficient resources to meet the additional workload flowing from the administration of this provision.

Regulation 3

8. With regard to the Chinese version of the proposed Regulation 3 of the Regulation which read “公眾娛樂場所的管理人須在該場所外面的位置展示第 2 條所指的告示，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”，the Assistant Legal Adviser 2 (ALA2) opined that it failed to reflect fully the meaning of its English version in relation to the “locations” where the notices were to be displayed. In response, PAS/C&I undertook to revise the wording so that it would read as “公眾娛樂場所的管理人須在該場所外面的位置展示第 2 條所指的告示，展示告示的位置及數目須能確保進入該場所的人能輕易看見和閱覽該告示”. This was to put it beyond doubt that the manager should choose such locations (which could be more than one) to display the notice so that it may be readily seen and read by anyone entering that place.

Schedule

9. Concerning the proposed statement to be prescribed in the notice as set out in the Schedule, which read as “It is an offence to bring video recording equipment into the cinema, theatre or concert hall without the express consent of the manager.” (“任何人未得管理人的明示同意而攜帶攝錄器材進入電影院、劇院或音樂廳，即屬犯罪。”), ALA2 noted with concern that the statement did not reflect fully the effect required of it by section 31E of the Ordinance. Since “bringing a video recording equipment into the cinema, theatre or concert hall” was only one of the various modes of “possessing a video recording equipment” in a place of public entertainment, she was of the view that the statement should be refined to bring out precisely the intent of the provision. Echoing ALA2’s view, Mr Henry WU also considered that the proposed statement might give rise to arguments that only the act of bringing video recording equipment into a place of public entertainment was prohibited but not the act of keeping a video recording equipment brought into it by others. In order to plug every possible loophole which bootleggers might make use of, consideration should be given to improving the proposed statement to spell out clearly the nature of the offence in the warning notice. Mr Kenneth TING supported Mr WU’s view.

10. In response, PAS/C&I stressed that section 31E only required that the notice displayed by the manager should have the effect that unauthorized possession of video recording equipment in that place was prohibited. There was no statutory requirement that the notice had to reproduce the exact wording or cover each and every possible scenario caught by the prohibition in that section. The Administration had proposed the aforementioned statement because the Chinese translation of “possession” i.e. “管有” was too legalistic and not readily understood by a layman, and the most common offence of “possession” likely to be committed by members of the general public was to

bring (攜帶) video recording equipment into a place of public entertainment without the express consent of the manager. Nevertheless, in the light of ALA2 and members' concerns, he undertook to replace “攜帶攝錄器材” with “攜有或藏有攝錄器材” and make a corresponding amendment to the English version, so as to ensure that the intent of the provision could be fully reflected while a clear and direct message could be relayed to the public. The amended version would read as follows:

“任何人未得管理人的明示同意，不得在電影院、劇院或音樂廳攜有或藏有攝錄器材。”

“No video recording equipment is allowed in a cinema, theatre or concert hall without the express consent of the manager.”

11. As regards the proposed design of the warning sign, Mr Henry WU opined that it could not bring out clearly the message that possession of video recording equipment was prohibited. In reply, PAS/C&I said that it was the best design which the Administration could come up with after seeking professional advice. Nevertheless, he took on board Mr WU's suggestion of highlighting the relevant terms i.e. “攜有或藏有” in the statement so as to bring home the message more clearly.

12. To conclude, the Chairman indicated that he would report to the House Committee on 2 March 2001 regarding the Subcommittee's deliberations on the Regulation, and the Administration's intention to move a motion at the Council meeting of 14 March 2001 to amend the Regulation. Subject to the passage of the motion, the Regulation would come into effect on 1 April 2001.

13. The meeting ended at 11:40 am.