

《Revised》

立法會

Legislative Council

LC Paper No. CB(1) 1433/00-01
(These minutes have been seen
by the Administration)

Ref : CB1/PL/CI/1

Panel on Commerce and Industry

**Minutes of meeting
held on Monday, 9 April 2001, at 4:30 pm
in the Chamber of the Legislative Council Building**

Members present : Hon Kenneth TING Woo-shou, JP (Chairman)
Hon HUI Cheung-ching (Deputy Chairman)
Dr Hon LUI Ming-wah, JP
Hon NG Leung-sing
Hon CHEUNG Man-kwong
Hon CHAN Kam-lam
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP

Non-Panel Members attending : Hon James TIEN Pei-chun, JP
Hon Eric LI Ka-cheung, JP
Hon Frederick FUNG Kin-kee

Members absent : Prof Hon NG Ching-fai
Hon Mrs Selina CHOW LIANG Shuk-yee, JP
Hon SIN Chung-kai
Hon CHOY So-yuk
Hon Henry WU King-cheong, BBS

Public officers attending : For Item IV

Mr Francis HO
Commissioner for Innovation and Technology

Miss Agnes WONG
Assistant Commissioner for Innovation and
Technology (Infrastructure)

Mr Peter YUEN
Project Director, Architectural Services Department

Mr LI Ho-kin
Project Manager, Architectural Services Department

For Items V & VI

Mr Kenneth MAK
Deputy Secretary for Commerce and Industry

Mr Philip CHAN
Principal Assistant Secretary for Commerce and Industry

For Item V

Miss Pancy FUNG
Assistant Director of Intellectual Property

For Item VI

Mr Peter CHEUNG
Deputy Director of Intellectual Property

Mr Vincent POON
Assistant Commissioner of Customs and Excise

For Item VII

Miss Anita CHAN
Principal Assistant Secretary for Commerce and Industry

Mr Edward YAU
Deputy Director-General of Trade and Industry

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

Staff in attendance : Miss Anita HO
Assistant Legal Adviser 2

Mrs Queenie YU
Senior Assistant Secretary (1)6

Mr TSANG Siu-cheung
Senior Assistant Secretary (1)7

I Confirmation of minutes of previous meeting
(LC Paper No. CB(1) 938/00-01)

The minutes of the meeting held on 12 February 2001 were confirmed.

II Information paper issued since last meeting

2. Members noted that the following information paper had been issued since last meeting:

Report of the Hong Kong Special Administrative Region of the People's Republic of China in the light of the International Covenant on Economic, Social and Cultural Rights (LC Paper No. CB(1) 813/00-01)

III Date of the next meeting and items for discussion

(LC Paper No. CB(1) 969/00-01(01) - List of outstanding items for discussion;
LC Paper No. CB(1) 969/00-01(02) - List of follow-up actions)

3. Members noted that the next meeting would be held on 14 May 2001 at 4:30 pm in the Chamber of the Legislative Council Building. They also agreed that discussion of the item on "Progress report on the liberalization of the Rice Control Scheme" raised by Mr CHAN Kam-lam at the meeting on 12 March would be deferred to the next meeting. The Administration had confirmed that it did not have any proposed items at this stage. As members had not made any suggestions at the meeting, the Chairman invited them to inform the Clerk of any proposed items after the meeting.

4. Members also noted that a special meeting of the Panel had been scheduled for Thursday, 12 April 2001 at 2:30 pm to meet deputations in relation to the "Enforcement action taken by the Government following the commencement of the Intellectual Property (Miscellaneous Amendments) Ordinance 2000". Government representatives were also invited to attend the meeting to listen to the views of the deputations. As suggested by Mr CHEUNG Man-kwong, members agreed that representatives of the media (e.g. radio and television stations, etc) should be invited to attend the meeting, so that the Panel would be able to listen to a more comprehensive range of views.

IV Science Park at Pak Shek Kok - Phase 1c
(LC Paper No. CB(1) 969/00-01(03))

5. The Commissioner for Innovation and Technology (CIT) briefed members on the proposal for the construction works of the remaining part of Phase 1 (i.e. Phase 1c) of the Science Park. Details were set out in the information paper from the Administration (LC Paper No. CB(1) 969/00-01(03)). In view of the keen competition for tenancy in Science Park Phase 1, the Government would proceed with the planning of the Phase 2 development, such as financing and supporting arrangements, and would provide members with the relevant information in due course.

6. As the construction of Science Park Phase 1c would not be completed until 2004, Mr NG Leung-sing was concerned that the supply of lettable space would fall short of demand and enquired whether the Administration had solutions available. CIT responded that in order to address the problem raised by Mr NG, the Government would expedite the construction of Phase 1c and commence the Phase 2 development as soon as possible. He further pointed out that the Government also planned to use and convert the vacant factory premises in industrial estates to provide temporary development facilities for potential tenants who failed to secure immediate admission to the Science Park, so as to minimize the loss of Science Park tenants.

7. Mr NG Leung-sing enquired whether the conversion of vacant factory premises in industrial estates would have additional financial implications on the development of the Park. CIT pointed out that additional financial commitment was unavoidable, but he believed that after the merger of the three organizations, the Hong Kong Science and Technology Parks Corporation (HKSTPC) would have sufficient resources to absorb the costs of minor conversion works. For conversion works involving significant construction costs, HKSTPC might need to seek additional funding from the Government.

8. Mr HUI Cheung-ching enquired about the criteria adopted by HKSTPC for admission of tenants to the Science Park. CIT advised that the tenants must belong to one of the four clusters of companies from the electronics, information technology, biotechnology and precision engineering sectors. Moreover, they were required to engage in relevant research and development work, and have considerable resources to undertake development. He undertook to provide members with information in writing on the criteria for admission of tenants to the Science Park after the meeting.

(Post meeting note: The information on the criteria for admission of tenants to the Science Park provided by CIT as detailed in LC Paper No. CB(1) 1014/00-01 had been circulated to members for reference on 12 April.)

9. Responding to Mr NG Leung-sing's enquiry about "limiting number of plants operating concurrently for noisy construction activities" in paragraph 14

of the paper, Project Manager, Architectural Services Department (PM/ASD) clarified that the limit was based on the aggregate noise level. Mr NG Leung-sing further enquired how the Government could ensure that the contractors of the Science Park complied with the requirements set out in the waste management plan submitted. PM/ASD replied that the staff of the Architectural Services Department would carry out regular on-site monitoring during the construction period.

V Registration of Copyright Licensing Bodies Regulation
(LC Paper No. CB(1) 984/00-01(01))

10. The Deputy Secretary for Commerce and Industry (DS/CI) briefed members on the contents of the proposed Registration of Copyright Licensing Bodies Regulation (the Regulation). Details were set out in the information paper submitted by the Administration (LC Paper No. CB(1) 984/00-01(01)).

11. Mr James TIEN enquired whether the Regulation would affect the normal operation of the existing copyright licensing bodies. DS/CI advised that the Regulation would not have adverse effects on the operation of the existing copyright licensing bodies. He also said that the registration scheme would operate purely on voluntary basis. Copyright licensing bodies could still operate as normal even if they did not register under this scheme. He revealed that so far three local copyright licensing bodies had indicated that they would apply for registration.

12. Mr James TIEN further enquired about the role of the Copyright Tribunal. DS/CI advised that where disputes on royalty charges arose between the copyright licensing bodies and potential licensees, the case concerned could be referred to the Tribunal for a ruling. In determining whether the royalty charge of a licensing scheme was reasonable, the Tribunal generally had to take into account public interest, having regard to the following factors as listed in section 167(1) of the Copyright Ordinance:

- (a) the availability of other schemes, or the granting of other licences, to other persons in similar circumstances;
- (b) the terms of those schemes for licences;
- (c) the nature of the work concerned;
- (d) the relative bargaining power of the parties concerned; and
- (e) the availability to the licensees or prospective licensees of relevant information relating to the terms of the licensing scheme or licence in question.

13. In view of the voluntary nature of the registration scheme, Mr CHEUNG Man-kwong was concerned as to whether the copyright agreements of individual copyright licensing bodies had clearly set out the scope of protection enjoyed by the authorized bodies and their liabilities after being granted the authorization. DS/CI pointed out that according to subsection 2(b)

of section 168 of the Copyright Ordinance, there was implied in every licence an undertaking by the licensing body to indemnify the licensee. Therefore, the licensees did not have to worry about the issue of liabilities after obtaining the authorization.

14. Mr CHAN Kam-lam suggested that the Government should consider operating the registration scheme on a non-voluntary basis so that those applying for authorization knew what course to take. DS/CI said that the Government would consider members' views. However, he pointed out that it might be necessary to amend other provisions in the Copyright Ordinance to effect such a change. He emphasized that copyright was a private property right. Therefore, copyright owners should have the liberty to choose whether or not to participate in the Government's registration system.

15. Mr HUI Cheung-ching enquired about the number of complaint cases received in the past involving royalty charges. The Assistant Director of Intellectual Property replied that since the implementation of the Copyright Ordinance, the Copyright Tribunal had received a total of five complaint cases. These were still in progress.

VI Enforcement action taken by the Government following the commencement of the Intellectual Property (Miscellaneous Amendments) Ordinance 2000
(LC Paper No. CB(1) 984/00-01(02))

16. DS/CI briefed members on the enforcement action taken by the Government following the commencement of the Intellectual Property (Miscellaneous Amendments) Ordinance 2000. Details were set out in the information paper from the Administration (LC Paper No. CB(1)984/00-01(02)).

17. On behalf of the Federation of Hong Kong Industries, the Chairman asked the Commerce and Industry Bureau (CIB) the following questions: (1) whether copyright owners of local computer software had raised the selling prices of individual software as a result of the implementation of the Intellectual Property (Miscellaneous Amendments) Ordinance 2000; (2) whether the Consumer Council (CC) was aware of the price differential between local and overseas software; and (3) whether parallel importation of computer software was in breach of the law. DS/CI replied that according to Business Software Alliance (BSA), copyright owners of local computer software had not raised the selling prices of individual software as a result of the implementation of the Amendment Ordinance. It was due to their underestimation of the actual market demand which had caused a short supply in some software products that the selling prices of those products were raised in the distribution process. He advised that he had not contacted CC beforehand to discuss the price differential between local and overseas software but he would follow up this issue. However, he pointed out that as the computer software used locally was mainly in Chinese, it was impossible to draw a direct price comparison with software in

overseas jurisdictions. Regarding the parallel importation of computer software, he pointed out that the Copyright Ordinance provided that parallel importation of computer software products within 18 months after they had been put on sale might constitute a criminal offence. Nevertheless, whether parallel importation of computer software products was in breach of the law still depended on the terms of individual software such as whether the authorization provisions concerned restricted the use of the software in Hong Kong.

18. Referring to the minutes of meetings of the Bills Committee on 1, 9 and 14 June 2000, Mr James TIEN pointed out that when the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 was passed in June last year, the Administration and Members focused on bootlegging in cinemas and the copying of software only. They did not express direct concern about the impact of the provisions on the photocopying of newspapers in the Amendment Ordinance on the community. As nowadays many organizations would photocopy a few newspapers for non-profit-making purposes, Mr James TIEN commented that the Government should conduct another extensive consultation exercise and examine the feasibility of deleting the provisions on the photocopying of newspapers in the Amendment Ordinance. He also pointed out that the three newspapers with high circulation, i.e. Oriental Daily News, Apple Daily and The Sun, were not included in the eleven newspapers set out in paragraph 9 of the paper. Therefore, he urged the Administration to contact these newspapers for a consensus to facilitate an early establishment of a collective licensing mechanism for the newspaper industry. DS/CI advised that the Government had been aware of the issue and would actively consider Mr James TIEN's views. He also advised members that the Administration would attend the special meeting of the Panel on 12 April to collect views from the newspaper industry.

19. Mr Eric LI asked the Administration why the supporting arrangements were made only a few months before the implementation of the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 and, as a result, the arrangements were not in place when the Ordinance was implemented, thus causing unnecessary confusion to the community. DS/CI explained that the Administration had approached the newspaper industry in October last year, briefing them on overseas experience and encouraging them to establish a collective licensing mechanism expeditiously to prepare for the implementation of the new law. Basically, the arrangements had been making good progress up to January this year. However, by March the newspaper industry had not yet reached consensus. The Administration could only resort to transitional arrangements for the implementation of the new law, i.e. with the consent of most of the newspapers, no criminal complaints would be lodged against the photocopying of newspapers in April.

20. In response to Mr Eric LI's enquiry about the copyright ownership of Government publications, DS/CI advised that to his understanding, the authorization for the use of most Government publications was arranged by the Information Services Department (ISD). As such, he would follow up Mr LI's

enquiry with ISD. The Deputy Director of Intellectual Property (DD/IP) pointed out that according to general Government policy, the Department would allow, upon application, the use of Government publications for non-commercial purposes. Where commercial use was involved, the Government would recover the cost for the use of its copyright publications. Mr Eric LI said that in the past, he knew nothing about the authorization policy for Government publications. Therefore, he hoped that specific details of the policy would be widely publicized so that the community could know what course to take. Besides, as the operation of the press was rather independent, he asked the Administration whether it would consider amending the relevant legislation if no total agreement could be obtained from the newspaper industry for establishing a collective licensing mechanism. DS/CI responded that the Government would solicit actively the views from different sectors in the community and would not rule out the possibility of introducing legislative amendments.

21. Mrs Sophie LEUNG hoped that the Administration, in handling copyright issues, could receive comprehensive views from various sectors and make reference to overseas experience. As life-long learning was being encouraged in society, she suggested that exemptions should also be extended to include the use of copyright materials for academic purposes outside schools.

22. Mr CHAN Kam-lam enquired whether the Administration had taken into account the experience of the United States (US) besides making reference to the laws of the United Kingdom and Australia when amending the Copyright Ordinance. DS/CI replied that reference had been made to the US copyright law but given its loose drafting, eventually no provisions therein were adopted.

23. Mr CHEUNG Man-kwong suggested that the Government should elaborate on the phrase “within a reasonable extent” where exemptions were granted so as to avoid unnecessary speculation about criminal liability under the provisions. DS/CI advised that the concept of “reasonable extent” was based on the common law and it was rather difficult to give a specific definition which depended on the objective factors of individual cases. DD/IP supplemented that in defining “reasonable extent”, it was a general practice to refer to the case law in common law countries. The reasonableness of an act must be judged according to the perspective of a fair, impartial and honest person. DS/CI stressed that the Administration would discuss the issue with the publishing industry and the education sector with a view to setting out clear guidelines and arrangements for the collective application for copyright authorization.

24. In view of the acute shortage of authentic computer software, Mr HUI Cheung-ching requested the Administration to suspend the implementation of the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 in order to avoid affecting the operation of the small and medium enterprises (SMEs). DS/CI advised that BSA had decided not to lodge complaints to the Customs & Excise Department involving the newly amended liabilities within the month of April. He also said that the balance in the supply and demand for software products would be restored by mid-April. The pressure currently faced by

SMEs in purchasing additional licensed copies of computer software would subsidise by then. He further pointed out that in taking enforcement actions, the Government would require evidence adduced by the licensees. Otherwise, criminal prosecution could not be brought against suspected infringing acts.

VII Trade and Industry Department - Creation of a permanent post of Administrative Officer Staff Grade C
(LC Paper No. CB(1) 984/00-01(03))

25. The Principal Assistant Secretary for Commerce and Industry and Deputy Director-General of Trade and Industry briefed members on the creation of a permanent post of Administration Officer Staff Grade C in the Trade and Industry Department to head the Asia Division in the Commercial Relations, Controls and Support Group of the Department, to be offset by the deletion of a permanent post at an equivalent level in CIB. Details were set out in the information paper from the Administration (LC Paper No. CB(1) 984/00-01(03)).

26. As no additional funding was required, members supported the proposal.

VIII Any other business

27. There being no other business, the meeting ended at 7:15 pm.