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Panel on Commerce and Industry

**Minutes of special meeting
held on Thursday, 12 April 2001, at 2:30 pm
in the Chamber of the Legislative Council Building**

- Members present** : Hon Kenneth TING Woo-shou, JP (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 Cyd HO Sau-lan
Hon YEUNG Yiu-chung
Hon Audrey EU Yuet-mee, SC, JP
- Members absent** : Hon HUI Cheung-ching (Deputy Chairman)
Prof Hon NG Ching-fai
Hon Mrs Selina CHOW LIANG Shuk-ye, JP
Hon SIN Chung-kai
Hon CHOY So-yuk
Hon Henry WU King-cheong, BBS
- Public officers attending** : Mr CHAU Tak-hay
Secretary for Commerce and Industry
- Mr Kenneth MAK
Deputy Secretary for Commerce and Industry
- Mr Philip CHAN
Principal Assistant Secretary for Commerce and Industry

Mr Peter CHEUNG
Acting Director of Intellectual Property

Mr Vincent POON
Assistant Commissioner of Customs and Excise

**Attendance by
invitation**

: Federation of Hong Kong Industries

Ms Alexandra POON
Assistant Director

Mr Roger TAM
Senior Administrative Officer

Hong Kong General Chamber of Commerce

Mr Christopher CHENG
Deputy Chairman

Mr CHEUNG Yiu-sing
Assistant Director

The Chinese Manufacturers' Association of Hong Kong

Dr Dennis YIP
Chairman, Committee of Innovation and Technology

Mr Coody KO
Executive Officer

Hong Kong Productivity Council

Dr KEUNG Wing-ching
Branch Director, Information Technology & Services

Mr Edward TAM
Principal Consultant

Business Software Alliance (Hong Kong)

Mr Howard DIGBY
Chairman

Hong Kong, Kowloon & New Territories Motion Picture Industry Association Limited

Mr TSUNG Wan-chi, Woody
Chief Executive

Hong Kong Publishing Federation Limited

Dr CHAN Man-hung
Convenor, Committee on Education Policy

Mr Patrick KWONG
Member, Committee on External Affairs

Hong Kong Reprographic Rights Licensing Society

Mr Viking YAM
General Manager

International Federation of Phonographic Industry (Hong Kong Group) Limited

Mr FUNG Tim-chee, Ricky
Chief Executive Officer

The Newspaper Society of Hong Kong

Mr LAU Chi-kuen
Spokesman

Mr KWONG King-lim
Director General

Hong Kong Federation of Education Workers Limited

Mr HUI Chun-lung
Executive Committee Member

Hong Kong Private Schools Association Limited

Mr CHIU Cheung-ki
Vice-President

Asia Television Limited

Ms Judy WONG
Corporate Lawyer

Hong Kong Commercial Broadcasting Company Limited

Mr Robert YOUNG
Consultant

Phoenix Satellite Television Company Limited

Ms Florence LAM
Company Secretary

Mr KO Ping-yeung
Vice President, Programme Channel Operations

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

Staff in attendance : Miss Anita HO
Assistant Legal Adviser 2

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

I 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))

The Secretary for Commerce and Industry (SCI) made a statement on the agenda item. Details were set out in the information paper provided by the Administration (LC Paper No. CB(1) 1021/00-01(01)).

2. Ms Cyd HO advised that she did not support going through the three readings of the Amendment Bill in one Council meeting as proposed in SCI's statement unless it was absolutely essential.

3. The Chairman invited representatives of the deputations to take turns to give their views on the subject.

4. Ms Alexandra POON of the Federation of Hong Kong Industries (FHKI) advised that FHKI supported the Government's vigorous enforcement action against copyright piracy in the course of business. The Federation considered that in general all commercial rights enjoyed by copyright owners should be respected. As regards the criminal provisions in the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 ("Amendment Ordinance")

relating to the copying of works in the print media, FHKI held the view that these provisions would hamper the dissemination of information and would affect substantially the normal operation of various organizations in the community. Hence, FHKI hoped that the Government would introduce legislative amendments as early as possible to allow schools, non-profit-making bodies and commercial organizations to photocopy or fax newspapers for non-profit-making purposes. Moreover, FHKI was worried that some small and medium enterprises (SMEs) which could not afford expensive computer software might be forced to terminate their businesses for financial reasons. This would seriously hinder the economic development of Hong Kong. FHKI, therefore, suggested that the Government should call on local suppliers to lower the prices of computer software. FHKI also hoped that the Government could provide funding to the Hong Kong Productivity Council for establishing a task force to provide technical support to SMEs so that they could switch to other operating platforms and software, such as those running on LINUX, instead of patronizing Microsoft products.

5. Mr Christopher CHENG of the Hong Kong General Chamber of Commerce (HKGCC) advised that HKGCC supported the spirit of the Amendment Ordinance in combating copyright piracy but objected to the criminal provisions relating to the photocopying of newspapers. HKGCC opined that these provisions were so harsh that the dissemination of information would be affected. This would cause great inconvenience to the daily operations of commercial enterprises. Over the past few months, a number of HKGCC's member organizations had raised their concerns about the criminal provisions relating to newspaper photocopying in the Amendment Ordinance. Summarizing the views of its member organizations, HKGCC considered that, except for those companies providing newspaper-cutting and research services, enterprises in general would photocopy newspapers for non-profit-making purposes. Therefore, exemptions should be granted in this respect. HKGCC also supported the setting up of a collective licensing mechanism and the introduction of a code of practice to ensure its transparency.

6. Dr Dennis YIP of the Chinese Manufacturers' Association of Hong Kong (CMAHK) advised that CMAHK supported the objective of the Amendment Ordinance. CMAHK opined that the Government should combat vigorously the use of infringing articles in the course of business and regulate the unauthorized reproduction of copyright articles. CMAHK considered that the publicity activities undertaken by the Government before the commencement of the Amendment Ordinance were inadequate. As a result, computer software dealers and the newspapers industry were not well prepared for the implementation of the Amendment Ordinance. Dr YIP pointed out that as the supply of computer software had been dominated or even monopolized by just a few software companies, the prices of computer software remained on the high side. This increased the production costs and created an adverse business environment for SMEs. Although some local trade organizations had been actively making a collective bargain with software suppliers, the suppliers applied differential pricing strategies for different organizations. This had given

rise to market confusion and had left users totally at loss. Moreover, CMAHK believed that the criminalization of unauthorized photocopying of newspapers would cause nuisance to the community, including government departments, educational bodies, commercial organizations and the general public, and would hamper the normal flow of information. As such, CMAHK proposed to allow an appropriate grace period for the implementation of the Amendment Ordinance. The Government should also assist buyers and sellers in negotiating the demand and supply of computer software, so as to find a proper and reasonable solution. In addition, CMAHK hoped that the Government would consider providing special tax exemptions or financing support to ease their financial burden. The Government should also exempt newspaper photocopying for non-profit-making purposes from the criminal liabilities under the Amendment Ordinance.

7. Dr KEUNG Wing-ching of the Hong Kong Productivity Council (HKPC) said that HKPC had compared the selling prices of computer software worldwide. The results indicated that computer software sold in Hong Kong was in the medium price range. However, as SMEs still considered the prices of local computer software too high, HKPC had contacted the software suppliers concerned to negotiate discounts for SMEs. HKPC also recommended to SMEs to use other operating platforms and software, such as LINUX and its compatible software (e.g. Open Office, Star Office, 中文 2000, etc.). HKPC was prepared to conduct a feasibility study on the use of other operating platforms and software, as well as to provide SMEs with relevant training and technical support, in order to widen their choice of software.

8. Mr Howard DIGBY of Business Software Alliance (Hong Kong) (BSE(HK)) supported the Government in implementing the Amendment Ordinance to combat software piracy and believed that such a move would bring local intellectual property law in line with international standards. He remarked that the Government had done a lot of publicity work to raise public awareness before the implementation of the Amendment Ordinance. In view of the shortage of legitimate computer software, BSE(HK) promised that no criminal complaints would be made against SMEs in April for non-compliance. In order to facilitate the implementation of the Amendment Ordinance, BSE(HK) supported the early enforcement of the legislation by the Customs and Excise Department (CED).

9. Mr Woody TSUNG Wan-chi of the Hong Kong, Kowloon and New Territories Motion Picture Industry Association Limited (MPIA) pointed out the importance of protecting intellectual property rights. He expressed MPIA's support for the Government's efforts in combating copyright piracy and the voluntary registration system of copyright licensing bodies under the existing Copyright Ordinance.

10. Dr CHAN Man-hung of the Hong Kong Publishing Federation Limited (HKPF) said that HKPF was in support of the spirit of the Amendment Ordinance and commented that the protection of intellectual property rights

symbolized an advanced and modern community. Although the Amendment Ordinance allowed certain bodies to make copies of some copyright works, to a reasonable extent, for research and educational purposes, HKPF found that the term “a reasonable extent” was not clearly defined and that obtaining a licence tended to be time consuming. Given the complexity of intellectual property rights issues, Dr CHAN advised that HKPF would vigorously explore ways with the trade organizations concerned and make reference to international standards with a view to establishing practical copyright standards and a licensing mechanism for the publishing industry. He said that pending the establishment of such standards and mechanism, the majority of local publishers were willing to grant a three-month grace period to the education sector to avoid unnecessary proceedings against infringing acts. To facilitate education development, HKPF supported the granting of appropriate exemptions to the education sector so that copyright works could be used free of charge, to a limited extent, for teaching purposes without being construed as an infringement of copyright.

11. Mr Viking YAM of the Hong Kong Reprographic Rights Licensing Society (HKRRLS) pointed out the importance of protecting the copyright of published works and stressed that the right of copyright owners should be respected. According to HKRRLS, there should not be too much Government intervention on issues relating to copyright licensing. Copyright owners should have enough room to draw up their own licensing proposals and mechanisms. Mr YAM said that it was advisable for the Government to grant a longer grace period, say three months, to users of copyright works for complying with the legislation.

12. Mr Ricky FUNG of the International Federation of Phonographic Industry (Hong Kong Group) Limited praised the Government for its strenuous efforts to combat piracy activities. He commented that the Amendment Ordinance, which was implemented on 1 April, was in line with international standards. Mr FUNG commended SCI for dealing with the copyright of computer software, films and music separately.

13. Mr KWONG King-lim of the Newspaper Society of Hong Kong (NSHK) stated the consensus reached by members of NSHK as follows:

The three-point consensus reached on 11 April:

- (a) NSHK supported the implementation of the Amendment Ordinance and considered that in principle, the amended legislation was in order.
- (b) The law stipulated that subject to certain conditions, members of the public were allowed to use copyright works, to a reasonable extent, for research, private study, commentary and news reporting purposes. Libraries and schools were also allowed to use copyright works under reasonable circumstances. All along, newspaper companies had either exempted charitable bodies and educational organizations from paying licence fees for newspaper photocopying or just charged them nominal fees.

- (c) The charging standards applicable to copyright works were very complicated. Each member of NSHK each had its own long established standards and mechanisms. Public opinions focused mainly on the lack of a standardized charging method and criteria for photocopying newspapers for internal use. In this connection, NSHK would undertake a co-ordinating role to explore the establishment of a centralized charging mechanism for the photocopying of newspapers for internal use.

The four-point consensus reached on 2 April:

- (a) NSHK's member newspapers had already established their own copyright licensing mechanisms. Starting from 3 April, details for liaising with the member newspapers would be published.
- (b) There would be a one-month grace period during which NSHK's member newspapers would not lodge any criminal complaints to CED, although they would reserve their right to pursue civil remedies.
- (c) At the expiry of the grace period, it would be up to NSHK's member newspapers to decide whether or not to lodge criminal complaints against the parties with whom they had been negotiating over the issue of copyright licensing.
- (d) The establishment of a centralized charging mechanism for copyright licensing would be actively explored.

Mr LAU Chi-kuen of NSHK added that if any commercial organization wished to photocopy newspapers for internal use, it should contact the newspapers concerned to negotiate the charges for obtaining a licence. He reiterated that the criminal liabilities arising from newspaper photocopying for commercial purpose should not be exempted.

14. While admitting that the Amendment Ordinance had contributed to the protection of intellectual property rights, Mr HUI Chun-lung of the Hong Kong Federation of Education Workers Limited (HKFEW) said that it had also affected normal teaching activities and caused much confusion. He pointed out that under the Copyright Ordinance, a person who without the permission of the copyright owner copied, published, performed, showed or broadcast the work in public would have infringed the copyright. This would increase considerably the risk on the part of frontline teachers and principals of breaching the Ordinance. Mr HUI pointed out that it was difficult for teachers to obtain the permission of the copyright owners of the teaching materials. In turn, this would hinder the implementation of the school-based curriculum. Mr HUI further pointed out that the commencement of the Amendment Ordinance would also affect school performances. Unless these performances were held in educational organizations for educational purpose, the organizations concerned must obtain the prior permission of copyright owners. As such, HKFEW urged the Government to further clarify how the Amendment Ordinance would be implemented and to draw up clear guidelines to grant appropriate exemptions for normal educational activities. A comprehensive review of the Amendment

Ordinance should also be conducted as soon as possible to facilitate the development of educational activities.

15. Mr CHIU Cheung-ki of the Hong Kong Private Schools Association Limited (HKPSA) expressed the Association's support of the intention behind the legislation on protecting intellectual property rights and commended SCI for his willingness to accept responsibility. However, he considered the concept of "a reasonable extent" where newspaper photocopying was allowed as provided in the Ordinance rather unclear. This was likely to create certain grey areas. Hence, he suggested that the Government should conduct an early review of the Amendment Ordinance and introduce suitable amendments.

16. Mr Robert YOUNG, of the Hong Kong Commercial Broadcasting Company Limited supported the stance of the Government in protecting intellectual property rights. He also welcomed SCI's decision to suspend the implementation of the Amendment Ordinance concerning criminal provisions which affected works in the print media including newspapers, magazines, periodicals and books, as well as broadcasts and cable programmes, and the downloading of information from the Internet. He noted that the downloading of computer programmes, music or films from the Internet would be dealt with separately. Mr YOUNG then enquired whether forwarding electronic mail and its attachments would contravene the Copyright Ordinance. The Deputy Secretary for Commerce and Industry (DSCI) responded that the senders of the electronic mail, in general, had already given their implied consent to the receivers regarding the use and disposal of the information contained in the mail. Therefore, it would not constitute any violation of the Copyright Ordinance.

17. Ms Florence LAM of Phoenix Satellite Television Company Limited was concerned about the infringement acts of downloading television programmes for re-sale in the Mainland. She drew the Government's attention to this issue and suggested that the copyright of local television programmes should be better protected. In response, DSCI advised that under the existing Copyright Ordinance, a person who without the permission of the copyright owner in Hong Kong made recordings of television programmes for re-sale purpose was held criminally liable. The Customs and Excise Department (CED) would handle such cases in accordance with the law.

18. Mrs Sophie LEUNG praised SCI for responding positively to public sentiments by suspending the implementation of the Amendment Ordinance concerning criminal provisions which affected works in the print media including newspapers, magazines, periodicals and books, as well as broadcasts and cable programmes, and the downloading of information from the Internet. On SCI's proposal to go through the three Readings of the Amendment Bill in one Legislative Council meeting in April under a special procedure, Mrs Sophie LEUNG enquired about the transitional arrangements pending the passage of the Amendment Bill. She also supported the industry's request for the Government to clearly define the meaning of "a reasonable extent" and hoped that the definition would also be applied to organizations outside the education sector.

19. In response to Mrs Sophie LEUNG's enquiry, SCI advised that the Government intended to introduce the Bill on 25 April for the Legislative Council to go through three Readings in one Council meeting. As regards the transitional arrangements prior to the passage of the Bill, SCI stressed that NSHK had already promised not to lodge criminal complaints within April. So far, CED had not received any complaints lodged by identifiable complainants. As regards complaints received from identifiable complainants prior to commencement of the suspension provisions, the Government would deal with these cases in accordance with the law. Consideration would be given to the legislative intent announced by the Government, as well as public interest, before any final action was taken.

20. Ms Audrey EU asked SCI about the cessation of the suspension of the criminal provisions in the Amendment Ordinance. She stressed that the Administration should handle cautiously liability issues relating to copyright and should avoid criminalizing the relevant liabilities lightly. In response, SCI advised that the Government did not intend to set any time limit for the suspension of the Amendment Ordinance. This would allow enough time for holding discussions with various sectors in the community and the Legislative Council. If necessary, further legislative amendments could be made.

21. Mr CHAN Kam-lam wished to know whether NSHK supported SCI's proposal to suspend the criminal provisions in the Amendment Ordinance relating to the photocopying of newspapers as it might affect the normal operation of the newspaper organizations. In response, Mr LAU Chi-kuen of NSHK stated that as he had just been informed of SCI's proposal to suspend the criminal provisions in the Amendment Ordinance relating to the photocopying of newspapers, it was not possible for him to discuss the matter with members of NSHK prior to the meeting. Accordingly, he was unable to give any comments or views. However, he reiterated that even if SCI did not put forward such a proposal, NSHK's member newspapers had already reached a consensus to give members of the public a grace period of one month after the commencement of the Amendment Ordinance on 1 April. During the grace period, no criminal complaints would be lodged against the infringement acts of photocopying newspapers. SCI drew members' attention to the fact that the three local newspapers with the highest circulation were not among those NSHK's member newspapers which had reached the consensus.

22. Ms Cyd HO enquired whether HKRRLS would consider exempting licence fees in cases where copies were made for teaching and research purposes. She also asked about the loss of income which HKRRLS would suffer as a result. Ms HO also pointed out that while introducing amendments to the legislation, the Government should be aware of the implications to persons with hearing impairment of the copyright in sound productions. Mr Viking YAM of HKRRLS responded that HKRRLS received about \$100 000 as licence fees from schools each year and stressed that the amount was nominal. He pointed out that HKRRLS was actively discussing with the education sector how the scope of

“a reasonable extent” should be determined, so as to provide the education sector with sufficient room for teaching within reason. Ms HO added that since society was advocating a knowledge-based economy and encouraging investment in training the next generation, HKRRLS might consider exempting the licence fees altogether. This would avoid boosting the cost of education.

23. Dr LUI Ming-wah pointed out that the practice of certain suppliers in increasing software prices on the commencement of the Amendment Ordinance should not be encouraged. In his view, such a move would adversely affect the business environment of SMEs and undermine the overall economic development.

24. Mr Roger TAM of FHKI enquired whether the use of computer software which was bought overseas would contravene the local Copyright Ordinance. In response, DSCI advised that whether software users contravened the law depended mainly on whether the licence terms concerned restricted its use in certain regions. He pointed out that as long as the software had been put on sale for more than 18 months, even if there was parallel import, criminal liabilities would not arise. As for the software preloaded onto notebook computers brought into Hong Kong from overseas, provided that the users concerned did not know and had no reason to believe that the use of such software would constitute an infringement act, this would be a reasonable defence.

25. On the excessive demand for computer software, DSCI advised that the limited choices of software had led to domination in the market of certain software products by mainstream software programmes. The Government hoped that the implementation of the relevant amendments to the Copyright Ordinance could increase market size, thereby encouraging software companies to develop more substitute products. This would foster market competition and ultimately bring down software prices.

26. The Chairman enquired if the Government would give a written response to the questions raised by deputations and members. SCI advised that he had already responded to the questions concerned. For those questions he had not yet responded to, a written reply would be provided.

II Any other business

27. There being no other business, the meeting ended at 4:30 pm.