

立法會
Legislative Council

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Panel on Commerce and Industry

**Minutes of special meeting
held on Thursday, 19 April 2001, at 10:45 am
in the Chamber of the Legislative Council Building**

- Members present** : Hon Kenneth TING Woo-shou, JP (Chairman)
Hon HUI Cheung-ching (Deputy Chairman)
Hon NG Leung-sing
Hon Mrs Selina CHOW LIANG Shuk-ye, JP
Hon CHAN Kam-lam
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon SIN Chung-kai
- Non-Panel Members attending** : Hon Timothy FOK Tsun-ting, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
- Members absent** : Dr Hon LUI Ming-wah, JP
Prof Hon NG Ching-fai
Hon CHEUNG Man-kwong
Hon CHOY So-yuk
Hon Henry WU King-cheong, BBS
- Public officers attending** : Mr Kenneth MAK
Deputy Secretary for Commerce and Industry
- Mr Philip CHAN
Principal Assistant Secretary for Commerce and
Industry

Mr Stephen SELBY
Director of Intellectual Property

Miss Pancy FUNG
Assistant Director of Intellectual Property

Mr Jeffrey GUNTER
Senior Assistant Law Draftsman

Mr Michael LAM
Senior Government Counsel

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

Staff in attendance : Mr Jimmy MA
Legal Adviser

Ms Pauline NG
Assistant Secretary General 1

Miss Anita HO
Assistant Legal Adviser 2

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

I The draft Copyright (Suspension of Amendments) Bill 2001

The Deputy Secretary for Commerce and Industry (DSCI) briefed members on the draft Copyright (Suspension of Amendments) Bill 2001 (the draft Bill), the details of which were set out in the information paper provided by the Administration (LC Papers No. CB(1) 1033/00-01(01) and 1033/00-01(02)).

2. DSCI advised that copyright works in all media should enjoy the same level of protection without any differentiation under the Copyright Ordinance. According to his understanding, the newspaper industry had yet to establish a proper collective licensing mechanism. Therefore, the criminal provisions in the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 ("the amending Ordinance") concerning the reproduction of the works in the printed media had given rise to worries and inconvenience to the community. In response to the views of various sectors of the community, the Administration agreed to suspend the application of the relevant criminal provisions. Extensive consultation would be conducted as soon as practicable to seek long-term

solutions. As copyright issues were rather complicated and involved the interests of various parties, the Administration suggested that no deadline be set for the consultation period, thereby enabling the parties concerned to fully express their views and to achieve a consensus.

3. DSCI pointed out that the draft Bill sought to suspend the application of the amending Ordinance to the criminal provisions in the Copyright Ordinance in relation to:

- (a) works in the printed media, viz, newspapers, magazines, periodicals and books;
- (b) works in sound or television broadcast, or included in subscription cable television programmes; and
- (c) works downloaded from the Internet,

subject to certain exceptions.

If the Bill was passed by the Legislative Council (LegCo), the criminal provisions concerning the aforesaid works would revert to the position as at 31 March 2001, i.e. before the commencement of the amending Ordinance. However, DSCI stressed that the criminal sanctions against the infringement acts already provided for in the Copyright Ordinance before the amendments took effect were still in force. For example, copying books for sale or bootlegging movies and musical works for sale and commercial purposes were illegal. He also advised that the suspension of the application of the criminal provisions as proposed in the Bill would not apply to computer programmes, sound or visual recordings of music or songs, movies or television, dramas and films, which generally had substantial commercial value. Piracy of these works was rampant. Therefore, a high level of copyright protection was necessary.

4. Mr CHAN Kam-lam expressed concern about the absence of an end date to the suspension, which might give the public a negative impression that it was the Government's intention to allow the repercussions of the matter to wane over time. He suggested that the Administration should draw up a definite timetable, say, only when the relevant consultation exercise had been completed within one year and proper agreement had been reached with the parties concerned should the resumption of enforcement actions be considered.

5. In reply, DSCI said that the Government would conduct extensive consultation on the legislation concerned as soon as possible. However, it had reservations about the proposal to set a deadline for the consultation as this might exert unnecessary pressure on certain organizations and undermine the effectiveness of the exercise. Nevertheless, the Administration would actively consider Mr CHAN's suggestion.

6. In response, Mr CHAN Kam-lam said that imposing pressure on the parties concerned with an appropriate time limit would undoubtedly facilitate early resolution of the copyright licensing problems more effectively. He,

therefore, hoped that the Administration could accede to such a request by setting a time-frame for the scrutiny of the legislation.

7. According to the Legal Adviser (LA), it might not be necessary for members to set a definite end date for the suspension of the application of the amending Ordinance. Instead, members could adopt legislative procedures, such as extending the suspension period by resolution, if necessary.

8. Mr NG Leung-sing considered that the suspension of the amending Ordinance should be subject to a time limit. He pointed out that the absence of a definite time-frame would only cause uncertainty to the community. As such, Mr NG hoped that the Administration could provide a timetable for the consultation to be conducted in relation to the legislation concerned, as well as for the resumption of enforcement actions.

9. Mr Timothy FOK said that according to his understanding, the publishing and newspaper industries had already discussed the suspension of the criminal provisions of the amending Ordinance. On behalf of his functional constituency, he reiterated to the Administration the importance of defining clearly the scope of “reasonable use”. He hoped that the authorities concerned could set a definite time-frame for the suspension. He suggested that the Administration might consider restricting the period to three or six months. However, he had reservations about the proposal to suspend the application of the amending Ordinance indefinitely.

10. Mrs Selina CHOW pointed out that copyright was a complicated issue and that the Government should resolve the problem by adopting a two-pronged approach i.e. through “legislation” and “policies”. As this issue involved the interests of various parties, she did not support setting a rigid time-frame. Instead, an in-depth examination and consultation on the issue should be conducted. She considered that the Administration should review expeditiously the legislation concerned and report the progress to LegCo on a regular basis.

11. Ms Audrey EU said that she would support expeditious amendment of the criminal provisions in the amending Ordinance concerning the reproduction of works in the printed media. As time was tight, she could not fully grasp the contents and scope of the Bill. She was worried about the Government’s proposal to introduce the Bill into LegCo for it to go through three Readings in one Council meeting. According to her observation, the scope of the Bill differed slightly from that of the amending Ordinance, particularly in relation to the provisions concerning movies, television dramas or films and musical works. As these provisions involved criminal liabilities, prudent consideration was warranted. Ms EU asked LA whether he could gain a thorough understanding of the contents of the Bill before it was introduced into LegCo, and to provide legal advice so as to enable Members to decide whether the Bill should be passed.

12. LA replied that the time required for scrutinizing a bill depended on the nature and scope of the bill concerned. As the Administration had just introduced the draft Bill into LegCo for scrutiny, the Legal Service Division would require more time to examine the draft Bill so as to provide proper legal advice.

13. DSCI pointed out that the intent of the draft Bill was to seek the consent of LegCo within a short period of time for the suspension of the application of the criminal provisions in the amending Ordinance concerning the reproduction of the works in the printed media. This would remove doubts and minimize inconvenience to the community. He emphasized that the passage of the Bill would be decided by LegCo ultimately while the Government would complement its efforts as far as possible.

14. Ms Audrey EU agreed that the legislation concerned should be reviewed as soon as possible. However, she was worried that more haste could lead to less speed. She suggested that the Administration should explain the contents of the Bill in detail to the public and seek professional advice from legal bodies.

15. DSCI replied that after the Bill had been passed by LegCo, the Administration would explain its contents and implications in detail to the public.

16. Mr SIN Chung-kai did not support the Government's proposal to adopt the special procedure whereby the Bill would go through three Readings in one Council meeting. He considered that a compromise should be made whereby the Bill could be introduced into LegCo first, while resumption of the Second Reading debate could be arranged after the views from different sectors had been received. Nor did he support the indefinite suspension of the application of the criminal provisions in the amending Ordinance concerning the reproduction of works in the printed media, as this would leave a negative impression with the public. He suggested that tentatively the deadline for suspension could be set at the end of 2002/03 legislative session. If necessary, the Administration might consider extending the deadline further by a legislative procedure (e.g. a LegCo resolution) at that time.

17. DSCI emphasized that the present amending Ordinance would remain in force before the commencement of the Bill. However, as pointed out by the Secretary for Commerce and Industry at the special Panel meeting held on 12 April 2001, the Administration would take into account the public interest and the announced legislative intent when enforcing the law during the transitional period. Nevertheless, he remarked that pending the commencement of the Bill, the criminal provisions concerning the reproduction of the works in the printed media would still give rise to concerns in the community.

18. Mr HUI Cheung-ching said that in proposing the suspension of the application of the amending Ordinance, the Administration's intention was to allow the industry more time to establish a proper collective licensing mechanism.

However, he asked how the Administration would handle the situation if the industry still failed to reach a consensus on the establishment of a collective licensing mechanism upon the expiry of the suspension.

19. DSCI advised that he was unable to give any specific response to Mr Hui Cheung-ching's enquiry at this stage. However, the Administration would put forth solutions to address the actual difficulties encountered.

20. Mr CHAN Kam-lam commented that the adoption of the approach for the Bill to go through three Readings in one Council meeting was still open to discussion and that such an approach was only applicable to simple and uncontroversial bills. He pointed out that the public and LegCo Members might oppose the Bill. In order to avoid making the same mistakes, he considered that the matter should be dealt with prudently. Moreover, he hoped that the Government could take the initiative to hold discussions with the industry so as to identify the root of the problem and adopt suitable remedies.

21. Mrs Selina CHOW commented that as the Bill involved the interests of various parties, there would be practical difficulties for it to go through three Readings in one Council meeting. To adopt a prudent approach, she suggested that LegCo should set up a bills committee to examine carefully the contents of the Bill. She also urged the Administration to submit as soon as possible the confirmed version of the Bill so that the bills committee concerned could deliberate on the matter thoroughly. The suspension period of the amending Ordinance could be referred to the bills committee for further consideration.

22. DSCI pointed out that the Bill submitted to members for consideration was only a draft. At members' request, the Administration would revise the Bill and submit the confirmed version to LegCo for scrutiny as soon as practicable.

23. Mr SIN Chung-kai said that the Panel could propose setting up a subcommittee at the House Committee (HC) meeting to be held the following day, and convening an early meeting to scrutinize the amending Ordinance. Once the subcommittee had completed the scrutiny of the Bill and put its report with recommendations to HC, the Government could give notice to resume the Second Reading debate.

24. LA pointed out that there were precedent cases of subcommittees being established to scrutinize amending bills in advance. However, he advised that if the Government intended to resume the Second Reading debate of the Bill at the LegCo meeting on 2 May, there would be technical problems under the Rules of Procedure. Furthermore, he pointed out that as the Bill involved various interpretation issues and not purely a suspension of the application of the relevant provisions, members might need to reconsider whether the amendments could achieve the intended objectives without bringing about any new uncertainties and confusion.

25. Summarizing members' views, the Chairman said that the Panel supported in principle the introduction of the Bill to suspend the amending Ordinance. However, as members considered it necessary to further examine the legal and drafting aspects of the draft Bill, they had reservations about the Administration's proposal to expedite the legislative procedure. In view of this, the Panel would recommend that HC should set up a subcommittee to examine the draft Bill in detail.

II Any other business

26. There being no other business, the meeting ended at 11:55 am.

Legislative Council Secretariat
30 August 2001