

**President's ruling on  
Committee Stage Amendments to  
Copyright (Suspension of Amendments) Bill 2001  
proposed by Hon Kenneth TING Woo-shou, JP**

Hon Kenneth TING has given notice of his intention to move amendments to the Copyright (Suspension of Amendments) Bill 2001 (the Bill) at its Committee Stage, if the Bill gets its Second Reading at the Council meeting commencing on 20 June 2001. According to the report of the Bills Committee which examined the Bill, Mr TING's amendments propose to suspend all criminal provisions relating to the importation of "parallel-imported" copies of computer software.

2. The Secretary for Commerce and Industry (SCI) has been invited to offer his comments on the proposed amendments and Mr TING has been invited to respond. I have also sought the advice of Counsel to the Legislature.

**The Administration's view**

3. SCI considers that the proposed amendments seek to exclude, for the purposes of any offences under sections 118 and 120 of the Copyright Ordinance, infringing copies of parallel-imported computer programs so that their importation will not be an offence under the Bill. SCI points out that the Intellectual Property (Miscellaneous Amendments) Ordinance (the Amending Ordinance) enacted last year, which the Bill now seeks to amend, did not amend all the offences under sections 118 and 120. As such, Mr TING's proposed amendments go substantially beyond the scope of the Bill which only seek to suspend the operation of certain provisions in the Amending Ordinance.

**Response from Hon Kenneth TING**

4. Mr TING has advised the Clerk that he does not agree with SCI, but is not prepared to give a written response.

**Advice of Counsel to the Legislature**

5. Counsel to the Legislature advises that sections 118 and 120 are the main criminal provisions in the Copyright Ordinance (Cap. 528). "An infringing copy of a copyright work" is an element of crime for all the offences

provided in sections 118 and 120. For example, under section 118(1)(b), it is an offence to import into Hong Kong, without the licence of the copyright owner, *an infringing copy* of a copyright work otherwise than for private and domestic use. Under section 118(1)(d), it is an offence to possess, without the licence of the copyright owner, *an infringing copy* of a copyright work, for the purpose of, in the course of, or in connection with, any trade or business, with a view to committing any act of infringing the copyright. In section 120(1), it is provided that a person commits an offence if he makes outside Hong Kong, for export to Hong Kong otherwise than for his private and domestic use, any article that he knows would, if it were made in Hong Kong, constitute *an infringing copy* of a copyright work.

6. The objects of the Bill are to suspend the operation of certain amendments to the Ordinance effected by the Amending Ordinance. Among those provisions in the Copyright Ordinance amended by the Amending Ordinance last year are section 118(1)(d), (e), and (f), (4), (5) and (8) (with a new subsection (8A) added) and section 120(2) (with a new subsection (2A) added). Amendments to these two sections were mainly for replacing the words "for the purpose of trade or business" with "for the purpose of, in the course of, or in connection with, any trade or business". No amendments were introduced to change the meaning of "infringing copy" in sections 118 and 120 which continues to be governed by section 35 of the Ordinance.

7. Counsel to the Legislature states that, for the purpose of determining whether the proposed amendments comply with Rule 57(4) of the Rules of Procedure, it is sufficient to focus on the provisions in sections 118 and 120 upon which Mr TING's proposed amendments would have an impact. Although "infringing copy" appears in all the offences provided under sections 118 and 120, the only provision which would be changed materially by the amendments is section 118(1)(b). Under section 118(1)(b), a person commits an offence if he, without the licence of the copyright owner imports into Hong Kong otherwise than for his private and domestic use, an infringing copy of a copyright work. The meaning of "infringing copy" is that provided by section 35(4) of the Ordinance. If the proposed amendments were enacted, material change would be brought about to the meaning of "infringing copy" as provided by section 35(4), i.e. the importation of computer programs lawfully made outside Hong Kong will not be an offence, irrespective of when these programs are imported. It would be for this reason that the effect of section 35 (4) on section 118 would be displaced.

8. Since section 118(1)(b) is not one of the provisions sought to be included for suspension by the Bill because it was not amended by the Amending Ordinance last year, the proposed amendments are, to that extent, not relevant to the subject matter of the Bill.

## **My opinion**

9. Rule 57(4)(a) of the Rules of Procedure provides that an amendment to a bill must be relevant to the subject matter of the bill and to the subject matter of the clause to which it relates.

10. It is quite apparent, having taken into account the relevant Legislative Council Brief and the Long Title of the Bill, that the purpose of the Bill is to provide for the suspension of the operation of certain amendments to the Copyright Ordinance which were effected by the Amending Ordinance enacted by this Council last year. The Amending Ordinance did not change the meaning of "infringing copy" in section 35 of the Copyright Ordinance, or the offences relating to it in sections 118 and section 120 except those offences under section 118(1)(d), (e) and (f), (4), (5) and (8) and section 120(2). Mr TING's amendments seeking to disapply all the criminal provisions in the two sections regarding the importation of copies of parallel-imported computer programs therefore go beyond the subject matter of the Bill.

## **Ruling**

11. Having regard to the views of the SCI and the advice of Counsel to the Legislature, I rule that Mr TING's proposed amendments contravene Rule 57(4)(a) of the Rules of Procedure. They may not be moved to the Bill.

( Mrs Rita FAN )  
President  
Legislative Council

18 June 2001