

LEGISLATIVE COUNCIL BRIEF

Copyright Ordinance
(Chapter 528)

REGISTRATION OF COPYRIGHT LICENSING BODIES REGULATION

COPYRIGHT ORDINANCE (COMMENCEMENT) NOTICE 2001

INTRODUCTION

This brief explains the Registration of Copyright Licensing Bodies Regulation (“the Regulation”) at Annex A and the Copyright Ordinance (Commencement) Notice 2001 at Annex B.

BACKGROUND

2. Copyright licensing bodies are authorised by copyright owners to grant, on their behalf, licences to users of copyright works. Instead of contacting individual owners of copyright works to obtain licences for performing acts (e.g. copying) restricted by the copyright in the works, users can conveniently obtain licences from relevant licensing bodies.

3. The Copyright Ordinance (“the Ordinance”) provides for a **voluntary** registration scheme for copyright licensing bodies. The scheme aims to enhance the transparency of these bodies by requiring registered licensing bodies to make available to the public essential information such as scales of royalty charges for different uses. However, even without registering under the scheme, copyright licensing bodies can operate in Hong Kong. At present, to the extent of our knowledge, three copyright licensing bodies are operating in Hong Kong.

4. Under the Ordinance, the Director of Intellectual Property is the Registrar of Copyright Licensing Bodies (“the Registrar”). The Registrar is empowered to establish and maintain a register of copyright licensing bodies, and to specify the form and manner of registration or renewal of registration. The register will be open for public inspection. Our intention is to make the inspection free of charge.

5. Under the Ordinance, an application for registration will only be approved if the Registrar is satisfied that -

- (a) the applicant is a fit and proper person to be registered; and
- (b) the applicant will make available to the public information relating to the scales of copyright royalty charges for different uses, by at least setting out in its brochures and licence application forms; exhibiting the scales conspicuously in the registered office and the applicant's business places; and publishing the scales in an English newspaper and a Chinese newspaper in Hong Kong within two weeks after the issue of the certificate of registration.

6. The Ordinance further provides that if the registered copyright licensing body intends to change royalty charges, it must notify the Registrar at least one month before the effective date. In addition, the licensing body must make available to the public through the means in paragraph 5(b) above the new scales of charges at least two weeks before the effective date. Failure to do so would result in their registration being cancelled.

REGULATION

7. Under the Ordinance, the Secretary for Commerce and Industry may by regulation provide for the better carrying into effect of the scheme, as well as prescribe the fees for the application and renewal of registration. Accordingly, we propose to make the Regulation at Annex A. We have set the proposed fees in accordance with the full-cost recovery principle. The fees and the relevant cost computations are at Annex C.

8. The Regulation will commence on 13 July 2001.

NOTICE

9. We have not yet brought into operation the provisions in the Copyright Ordinance related to registration of licensing bodies pending the making of the Regulation in Annex A. These are the only provisions that have not come into operation. The Notice at Annex B will bring them into operation on 13 July 2001, the same date as the commencement of the Regulation.

PUBLIC CONSULTATION

10. In preparing the Regulation, we have consulted the copyright licensing bodies, copyright user groups and some other relevant organizations. There is general support for the voluntary registration system. The three existing copyright licensing bodies in Hong Kong have indicated that they will apply for registration.

11. We have taken into account the comments received during the consultation exercise in finalizing the proposed Regulation. For example, we have included additional information in the registration form to ascertain whether an applicant is (or continues to be) a fit and proper person.

12. There is a suggestion that the royalty charges of registered copyright licensing bodies should be regulated. Our view is that the registration of licensing bodies under the scheme does not confer monopolistic power on the bodies registered. Even if the bodies do not register under the scheme, they can continue to operate.

13. As regards the issue of royalty charges, the Ordinance already provides a statutory mechanism through the Copyright Tribunal¹ to adjudicate disputes on royalty charges between copyright licensing bodies and potential licensees. Anyone who considers the royalty charge of a licensing scheme unreasonable may refer the matter to the Copyright Tribunal for a ruling. The Tribunal's ruling is binding.

14. We also consulted the Legislative Council Panel on Commerce and Industry. The Panel did not object to the content of the Regulation. There was a suggestion that the Government should consider turning the voluntary registration scheme into a compulsory one, so as to facilitate easy access by users of copyright works to the relevant licensing bodies.

15. Since copyright is a private property right, some may argue that copyright licensing bodies should be given the choice of whether or not to be registered under the scheme. To make the scheme compulsory would

¹ The Copyright Tribunal is a quasi-judicial body appointed by the Chief Executive and comprises one Chairman, one Deputy Chairman, and seven members. The Chairman and Deputy Chairman must be persons qualified for appointment as a District Court Judge. The seven members have been appointed from a wide spectrum of the society to ensure that a balanced view can be reflected in the Tribunal's proceedings.

involve a significant policy change and amending relevant provisions of the Ordinance, which will require careful consideration. It cannot therefore be dealt with under the current Regulation.

BASIC LAW IMPLICATIONS

16. The Department of Justice advises that the proposed Regulation is consistent with the Basic Law.

HUMAN RIGHTS IMPLICATIONS

17. The Department of Justice advises that the proposed Regulation has no human rights implications.

BINDING EFFECT OF THE REGULATION

18. The Department of Justice advises that the proposed Regulation will not affect the current binding effect of the Ordinance.

FINANCIAL AND STAFFING IMPLICATIONS

19. The registration scheme will be operated by the Intellectual Property Department. It is envisaged that the number of prospective applications for registration will be small as there are only a handful of copyright licensing bodies at present. The additional workload will therefore be absorbed within the Department's existing resources. The Department will keep in view the registration procedures to minimize the resources required and hence contain the costs.

LEGISLATIVE TIMETABLE

20. The Regulation will be gazetted on 1 June 2001 and tabled at the Legislative Council on 6 June 2001.

PUBLICITY

21. A press release will be issued and a spokesman will be available to answer enquiries.

ENQUIRIES

22. For enquiries on this brief, please contact Mr Philip Chan of the Commerce and Industry Bureau at telephone number 2918 7480.

Commerce and Industry Bureau
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