

Revised

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香港特別行政區政府  
工商及科技局  
工商科



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COMMERCE AND INDUSTRY BRANCH  
COMMERCE, INDUSTRY AND  
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8 January 2003

Clerk to Bills Committee  
(Attn: Ms Connie Szeto)  
Bills Committee on Copyright (Amendment) Bill 2001  
Legislative Council Building  
8 Jackson Road  
Central  
Hong Kong

Dear Ms Szeto,

**Bills Committee on Copyright (Amendment) Bill 2001  
Follow-up to meeting on 10 December 2002  
and meeting on 15 January 2003**

I refer to your letter of 12 December 2002 on the subject and set out below our responses to the follow-up issues.

Removal of civil liability arising from violating geographical restriction on the use of computer software

2. Members asked the Administration to consider removing civil liability of end-users arising from violation of geographical restriction in the end-user licence agreement. After careful consideration on Members' views, we maintain our view that the liability should not be removed. A complete removal of the civil liability means an intervention into a private contract between the copyright owner and the end-user. This is a very serious matter and should be treated with care and full justification. In the current case, we consider that the removal may not be fully justified at this stage, since no evidence of a practice of inserting geographical restriction to circumvent the purpose of the Bill is found in the market now.

Revised draft Committee Stage amendments (CSAs)


3. Members and Assistant Legal Adviser suggested improvements to the drafting of CSAs for the new sections 35A(3), (3A) and 118A(1)(a). Having regard to these suggestions and taken the opportunities to re-examine other CSAs, we propose a set of revised draft CSAs attached at the Annex. The revisions made are textual and technical in nature to simplify the drafting without changing the legal effect of the provisions.

Attendance at the next Bills Committee meeting on 15 January 2003

4. Our attendance for the meeting on 15 January 2003 will be as follows :

Mr Kenneth Mak 麥靖宇先生	Deputy Secretary for Commerce, Industry and Technology (Commerce and Industry) 工商及科技局副秘書長(工商)
Mr Donald Chen 陳羿先生	Principal Assistant Secretary for Commerce, Industry and Technology (Commerce and Industry) 工商及科技局首席助理秘書長(工商)
Ms Pancy Fung 馮淑卿女士	Assistant Director for Intellectual Property 知識產權署助理署長
Ms Maria Ng 吳凱詩女士	Senior Solicitor, Intellectual Property Department 知識產權署高級律師
Mr Jonothan Abbott 顏博志先生	Senior Assistant Law Draftsman, Department of Justice 律政司高級助理法律草擬專員
Mr Sunny Chan 陳元新先生	Senior Government Counsel, Department of Justice 律政司高級政府律師
Mr Y K Tam 譚耀強先生	Senior Superintendent, Intellectual Property Investigation Bureau, Customs and Excise Department 香港海關版權及商標調查科高級監督

Yours sincerely,



( Laura Tsoi )

for Secretary for Commerce, Industry and Technology

c.c. IPD (Attn: Miss Pancy Fung and Miss Maria Ng)  
D of J (Attn: Mr Jonothan Abbott and Mr Sunny Chan)  
C&ED (Attn: Mr Y K Tam)

REVISED DRAFT

COPYRIGHT (AMENDMENT) BILL 2001

COMMITTEE STAGE

Amendments to be moved by the Secretary for Commerce,  
Industry and Technology

<u>Clause</u>	<u>Amendment Proposed</u>
1(2)	By deleting "Secretary for Commerce and Industry" and substituting "Secretary for Commerce, Industry and Technology".
3	<p>In proposed section 35A –</p> <p>(a) in subsection (2)(b), by deleting "subsection (3)" and substituting "subsections (3), (3A) and (3B)";</p> <p>(b) by deleting subsection (3) and substituting –</p> <p style="padding-left: 40px;">“(3) A copy of a feature film that is embodied in an article is not a copy of an associated work for the purposes of subsection (2) if –</p> <p style="padding-left: 80px;">(a) the copy is a copy of a feature film in its entirety or substantially in its entirety; or</p> <p style="padding-left: 80px;">(b) where the copy is a</p>

copy of part of a feature  
film –

- (i) all those parts of  
the feature film  
copies of which  
are embodied in  
the article  
together  
constitute the  
feature film in its  
entirety or  
substantially in  
its entirety; or
- (ii) the viewing time  
of all those parts  
of the feature  
film copies of  
which are  
embodied in the  
article, ~~when~~  
~~viewed as~~  
~~embodied in the~~  
~~article~~, is more  
than 15 minutes  
in aggregate.

(3A) A copy of a television drama

that is embodied in an article is not a copy of an associated work for the purposes of subsection (2) if –

(a) the copy is a copy of a television drama in its entirety or substantially in its entirety; or

(b) where the copy is a copy of part of a television drama –

(i) all those parts of the television drama copies of which are embodied in the article together constitute the television drama in its entirety or substantially in its entirety; or

(ii) the viewing time of all those parts of the television drama copies of which are

~~embodied in the  
article, when  
viewed as  
embodied in the  
article,~~ is more  
than 10 minutes  
in aggregate,

and in paragraphs (a) and (b)(i), reference to a television drama, in the case of a television drama comprising one or more episodes, is a reference to an episode of the television drama.

(3B) A copy of a musical sound recording ~~or a musical-visual recording~~ that is embodied in an article is not a copy of an associated work for the purposes of subsection (2) if the economic value of the article is predominantly attributable to –

- (a) the economic value of the copy, as embodied in the article; or
- (b) where copies of more than 1 musical sound recording ~~such work~~ are embodied in the article, the combined economic

value of all such copies,  
as embodied in the  
article.";

(3C) A copy of a musical visual recording that is embodied in an article is not a copy of an associated work for the purposes of subsection (2) if the economic value of the article is predominantly attributable to –

(a) the economic value of the copy, as embodied in the article; or

(b) where copies of more than 1 musical visual recording are embodied in the article, the combined economic value of all such copies, as embodied in the article.";

(c) in subsection (4) –

(i) in the definition of "feature film", by deleting everything after "a film" and substituting "of the kind commonly known as a movie;" "or a television drama";



(ii) in the definition of "musical visual recording", by deleting everything after "film" and substituting "with an accompanying sound-track, the whole or a predominant part of which sound-track consists of a musical work and any related literary work;"

(iii) by adding –

""television drama" (電視劇或電視電影) means a film of the kind commonly known as a television drama."

(iv) in the Chinese text, in the definition of "音樂聲音紀錄", by deleting the semicolon and substituting a full stop.

4

(a) In proposed section 118A(1), by deleting ", section 60 and 61 have effect subject to the following modifications, namely".

(b) By deleting proposed section 118A(1)(a) and substituting –

"(a) a person is a lawful user of a computer program for the purposes of sections 60 and 61 if he has a contractual right to use the program in any place in or outside Hong Kong,

and section 60(2) shall have effect accordingly; and".

5

- (a) In proposed section 199A(1), by deleting the definition of "copy of an associated work" and substituting –  
    ""copy of an associated work" (有聯繫作品複製品) has the same meaning as in section 35A;"
- (b) In proposed section 199A(2), by deleting "no proceedings for an offence under section 118(1) committed before that commencement shall be instituted or continued" and substituting "no person shall be liable to conviction for an offence under section 118(1) committed before that commencement".
- (c) In proposed section 199A(3), by deleting "no proceedings for an offence under section 118(1) committed before that commencement shall be instituted or continued" and substituting "no person shall be liable to conviction for an offence under section 118(1) committed before that commencement in either of the following cases, that is to say".

(d) In proposed section 199B(1), by deleting the definition of "copy of an associated work" and substituting –

""copy of an associated work" (有聯繫作品複製品) has the same meaning as in section 35A;"