

Legislative Council Bills Committee

Copyright (Amendment) Bill 2001

Excluding electronic publications from the scope of liberalisation

Purpose

We propose to exclude books, magazines, periodicals and sheet music in electronic form from the scope of liberalisation under the Bill. This paper sets out our proposal.

Background

2. At the meeting on 10 December 2002, we briefed Members on the outcome of our consultation with the publishing industry. We reported that the publishing industry opposed the inclusion of e-books within the scope of liberalisation under the Bill. We had a different view at that time and recommended that the scope of the Bill should remain unchanged.

3. We had since held further meetings with the publishing industry. The publishing industry stressed at the meetings that the local e-book industry had good potential to develop and flourish. Taking into account the market condition in the Mainland, the industry believed that liberalising parallel importation of e-books would significantly hamper the development of the local e-book industry. After careful consideration, we have now decided to exclude e-books from the scope of liberalisation under the Bill.

Proposed scope of exclusion

4. We need to define carefully the scope of e-books for which restrictions on parallel importation will be maintained. It is necessary to ensure that we will not unintentionally restrict parallel importation of desktop application software for personal, educational or recreational use. Because of the wider use of multimedia technology, the distinction

between e-books and some educational software becomes blurred. Both types of work may consist of a wide range of copyright works including literary works, artistic works, sound recordings and films, as well as some interactive elements. There is a limitation on how far we could draw a precise line between the two. Our proposed solution includes the following elements -

- (a) e-books will cover copyright works that are arranged or presented in the manner of a book, magazine, periodical or sheet music in electronic form, regardless of whether there is a printed form of the book, magazine, periodical or sheet music;
- (b) the 'relevant works' in a e-book may include literary works (excluding computer programs otherwise than in text form), dramatic works, musical works, photographs or graphic works, as well as sound recordings and films accompanying such works for illustrative purposes; and
- (c) the economic value of the article (e.g. CD-ROM) containing the e-book is predominantly attributable to the economic value of the copies of the 'relevant works' in the e-book.

A working draft of the provision reflecting the above elements is at Annex (in English only).

Advice sought

5. We welcome Members' views on our proposal in paragraph four above.

**Proposed wording for the
E-book amendment
(Working Draft)**

Clause

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Amendment Proposed

By adding –

"(3D) A copy of a relevant work that forms part of an electronic book, magazine or periodical [*or e-book*] and 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 relevant work are embodied in the article, the combined economic value of all such copies, as embodied in the article.";
- and

"(5) In this section –

“electronic book, magazine or periodical [*or e-book*]” means a work –

- (a) comprising a copy of a relevant work (whether or not accompanied for illustrative purposes by any sound recording or film) embodied in an article in

electronic form together with a computer program that provides a means of seeing the work; and

- (b) that is arranged/presented in the manner of –
 - (i) a book in electronic form;
 - (ii) a magazine or periodical publication in electronic form; or
 - (iii) sheet music in electronic form,

regardless of whether there is a printed form of the book, magazine, periodical or sheet music;

“relevant work” () means any of the following works, namely –

- (a) a literary work (other than a computer program);
- (b) a dramatic work;
- (c) a musical work; or
- (d) an artistic work in the form of a photograph or graphic work.”