

**Legislative Council Bills Committee
Copyright (Amendment) Bill 2001**

Legal concept of “economic value”

Purpose

The purpose of this paper is to provide information on the legal concept of “economic value” in the Copyright Ordinance (Cap.528) (“ Ordinance”) and in other overseas jurisdictions.

“Economic value” in section 35(8) of the Ordinance

2. The term “economic value” is presently contained in section 35(8) of the Ordinance under the definition of “accessory work”. The concept of “accessory works” is included so that restrictions against parallel importation would not apply to non-copyright goods with accompanying accessory works in which copyright subsists.

3. “Accessory work” is defined in section 35(8) of the Ordinance to mean a work incorporated in or consisting of labels, packaging, written instructions, warranties, instructional sound recordings and films that are incidental to an article and provided with the article on its sale. Furthermore, the **economic value** of the article is not predominantly attributable to the **economic value** of the accessory work.

4. We consider the economic value of an article (or the accessory work) should be determined objectively based on the perspective of a reasonable man.

5. We are not aware of any judicial decision on the interpretation of “economic value” in section 35(8) of the Ordinance.

Other Hong Kong Ordinances

6. The term “economic value” is not used in other Hong Kong ordinances. Similar terms like “economic worth”, “financial benefit”, “financial value” and “financial worth” cannot be located in the Hong Kong ordinances.

United Kingdom

Patents Act 1977

7. Under the Patents Act, any person may apply to the Comptroller for the

grant of a licence under a patent on certain grounds and subject to certain conditions. Where a licence is granted, it should include conditions entitling the proprietor of the patent concerned to adequate remuneration, taking into account the **economic value** of the licence.¹

Finance Act 2002

8. Schedule 29 of the Finance Act concerns the calculation of gains and losses of a company from intangible fixed assets. Intellectual property is defined therein to include, *inter alia*, any information or technique having industrial, commercial or other **economic value**².

Vehicle Excise Duty (Immobilisation, Removal and Disposal of Vehicles) Regulations 1997

9. The Regulations distinguish between vehicles of no economic value and other vehicles. Vehicles of no **economic value** are those where the total prescribed charges payable after a period of seven days in storage will exceed the resale or scrap value of the vehicle³.

Case law

10. We are unable to locate useful judicial decisions in United Kingdom which provides further elaboration on the term "economic value".

Australia

Aboriginal Land Rights (Northern Territory) Act 1976

11. Under this Act, where Aboriginal land is used or occupied for a purpose that is not a community purpose, the Crown shall pay rent to the Land Council at such rate fixed by the Minister having regard to the economic value of the land. It is further provided that the **economic value** of land shall not include the value of any royalties payable in connection with forestry operations on the land⁴.

¹ Patents Act 1977, Section 48A

² Finance Act 2002, Schedule 29, Part 1, paragraph 2

³ Vehicle Excise Duty (Immobilisation, Removal and Disposal of Vehicles) Regulations 1997, SI 2439, Section 10

⁴ Aboriginal Land Rights (Northern Territory) Act 1976, Section 15

New Business Tax System (Debt and Equity) Act 2001

12. For the purpose of this Act, the term “financial benefit” is defined to mean anything of **economic value**⁵.

Patents Act 1990

13. Under this Act, a person may apply to court for an order requiring the patentee to grant the applicant a licence to work the patented invention subject to certain conditions. Where a licence is granted, the applicant is required to pay to the patentee such amount as is agreed by them or failing which, such amount determined by the court to be just and reasonable having regard to the **economic value** of the licence⁶.

Case law

14. In a case relating to an opposition of a patent application, the court examined whether the method or process claimed by the applicant constituted a manner of new manufacture which resulted in a vendible product. The judge made a passing remark in the decision that something is “vendible” if it has economic value⁷.

15. In a copyright case where the issue is whether the work in question has been debased, the court made the comment that the focus could not solely be upon the **economic value** of a copyright work since a work having no measurable commercial value might still be debased. This remark suggests that economic value means measurable commercial value⁸.

United States

Assessment of property and franchise excise tax

16. In a case relating to the assessment of property and franchise excise tax, the State Board of Tax Appeals, New Jersey was required to examine the value of land used for railway purposes. The Board took the view that **economic value** in that context referred to the value that should be attributed to the land used as an integral and necessary part of the railroad, determined by the present

⁵ New Business Tax System (Debt and Equity) Act 2001 Division 974-160

⁶ Patents Act 1990, Section 133

⁷ A Couple' A Cowboys Pty Ltd v. Antony John Fowler Ward [1995] APO 12 (23 February 1995); 31 IPR 45; (1995) AIPC 91-168

⁸ Schott Musik International GMBH & Co & Ors v. Colossal Records of Australia Pty Ltd & Ors [1997] 531 FCA, per Hill J.

and prospective revenues to be derived from the operation of the railroad after deducting operating expenses⁹.

*Code of Ethics for Governmental Employees*¹⁰

17. The Code sets out the ethical standards for public servants. It provides, *inter alia*, the following:

- (a) no public servant shall receive any thing of **economic value**, other than compensation from the governmental entity to which he is duly entitled, for performance of his duties of his office; and
- (b) no public servant shall solicit or accept, directly or indirectly, any thing of **economic value** as a gift or gratuity from a person in certain circumstances e.g. where such person has contractual, business or financial relationship with the public servant's agency.

18. "**Things of economic value**" is defined to mean money or any other thing having economic value, except food, drinks etc. consumed by a public servant, including reasonable transportation and entertainment incidental thereto, while he is the personal guest of some person, and includes but is not limited to:

- (a) any loan, property interest, interest in a contract, merchandise, service, and any employment or other arrangement involving a right to compensation;
- (b) any option to obtain a thing of economic value; and
- (c) any promise or undertaking for the present or future delivery or procurement of a thing of economic value.

General observation

19. There is no conclusive interpretation of the concept of "economic value"

⁹ Appeal by Shelton Pitney and Walter P. Gardner, trustees of the property of the Central Railroad Company of New Jersey 20 N.J. Misc. 448; 28 A. 2d 660; 1942 N.J. Misc. Lexis 66

¹⁰ The relevant provisions are set out in (1) Jerome S. Glazer v. Commission on Ethics for Public Employees (No. 82-C-1853) Supreme Court of Louisiana 431 So. 2d 752; 1983 La. Lexis 10337 and (2) Re: Amtext, Inc, Louisiana Commission on Ethics for Public Employees (no. 92 CW 1408) Court of Appeal of Louisiana, First Circuit 625 So. 2d 693; 1993 La. App. Lexis 3259

in overseas jurisdictions. It appears the term "economic value" could be interpreted differently depending on the context in which it is used.

Commerce and Industry Branch
Commerce, Industry and Technology Bureau
February 2003