

立法會 *Legislative Council*

LC Paper No. CB(1) 1006/02-03(04)

Ref: CB1/BC/4/01

Bills Committee on Copyright (Amendment) Bill 2001 and Copyright (Amendment) Bill 2003

Background brief on Copyright (Amendment) Bill 2003

Purpose

This paper sets out the background of the Copyright (Amendment) Bill 2003 (the 2003 Bill), and summarizes the legislative proposals therein and views of Members expressed when the subject matter was deliberated at the meetings of the Panel on Commerce and Industry (the Panel) held on 12 November 2001, 10 January, 4 February, 25 June and 8 July 2002.

Background

2. The coming into effect of the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 (Amendment Ordinance) aiming at combating corporate copyright piracy activities and bootlegging has aroused grave concerns about its effects on the dissemination of information and disruption to educational activities. While the original aim of the legislative amendments was to combat rampant piracy in computer software and audio-visual products, the new law also applied to photocopying of printed works as well as downloading of information from the Internet. The public generally felt that the scope of the Amendment Ordinance was too wide.

3. To address the concerns, the Copyright (Suspension of Amendments) Ordinance 2001 (Suspension Ordinance) was enacted in June 2001 to suspend the operation of the criminal provisions of the Copyright Ordinance (the Ordinance) as effected by the Amendment Ordinance on copyright works other than computer programmes, movies, television dramas, and musical recordings ("the Four Categories of Works") until 31 July 2002. The validity period of the Suspension Ordinance has been extended to 31 July 2003 to allow sufficient time for the Administration to formulate a long-term solution.

Public Consultation

4. In November 2001, the Administration issued a consultation document titled "Review of Certain Provisions of Copyright Ordinance" (Consultation Document) to consult the public on related issues of the Amendment Ordinance, including:

- (a) criminal provisions related to end-user piracy;
- (b) permitted acts for educational purposes;
- (c) permitted acts for visually impaired persons;
- (d) permitted acts related to free public showing or playing of broadcast or cable programme;
- (e) parallel importation of copyright works other than computer software;
- (f) unauthorized reception of subscription television programmes; and
- (g) licensing bodies.

Consultation with the Panel

5. The Administration briefed the Panel on the Consultation Document at its meeting on 12 November 2001. The Panel met with deputations at its meeting on 10 January 2002 to solicit their views on the review. The Administration reported the outcomes of the public consultation and consulted the Panel on the legislative proposals at its meeting on 4 February and 8 July 2002. In view of the complexity of the subject matter, the Administration proposed to concentrate first on issues related to end-user criminal liability for use of pirated copies of copyright works in business with a view to introducing a bill to the Legislative Council in 2002-2003 legislative session. Other issues arising from the public consultation would be addressed in separate bills to be introduced in stages. At the meeting on 8 July 2002, the Administration briefed the Panel on a preliminary draft of the bill dealing with the end-user criminal liability (LC Paper No. CB(1) 2146/01-02(05)). The Panel urged the Administration to expedite the drafting of the legislative proposals and listen to the views of the public and the industry before introducing the bill.

Major proposals in the 2003 Bill

6. The 2003 Bill, gazetted on 7 February 2003, seeks to make permanent the suspension arrangements under the Suspension Ordinance and to make other related amendments to the Ordinance (such as amending the definition of the term "business"). Major proposals in the 2003 Bill include the followings:

- (a) To make permanent the arrangement whereby criminal liability for use of pirated copies of copyright works in business is confined to only the Four Categories of Works.
- (b) To remove the phrase "in connection with" from the expression "for the purpose of, in the course of, or in connection with, any trade or business" where it appears in the Ordinance.
- (c) To provide a new defence against criminal liability for employees possessing infringing copies of copyright works belonging to the Four Categories of Works supplied by their employers. The new defence will take retrospective effect from 1 April 2001.
- (d) To combat illicit reproduction of books by creating a new offence targeting copy-shops. Defences will be provided to ensure the fair operation of the new offence.
- (e) To remove end-user liability in relation to parallel importation and possession of copies of copyright works, unless the importation or possession is for the purpose of any of the following acts: selling, letting for hire, or distributing for profit or financial reward or to such extent as would prejudicially affect the copyright owner.

Members' views / concerns raised at previous Panel meetings

7. Members generally supported the policy objective of the Administration to make permanent the suspension arrangements under the Suspension Ordinance. Their major views / concerns raised at the previous Panel meetings are as follows:

Employees' liability

- (a) Members in general supported to remove criminal liability on employees as the sanction is too harsh for employees who will have little clout to bargain with employers if they wish to keep their jobs.

Criminal sanction against copy-shops

- (b) There are concerns about enforcement difficulties on the new offence targeting copy-shops to combat illicit reproduction of books and adverse impact on reproduction activities for educational or non-profit-making purposes.

Parallel importation of copyright works

- (c) Some members are concerned that the removal of criminal and civil liability in relation to parallel importation and possession of copyright works will have adverse impact on the development of creative industries and jeopardize the interests of the copyright owners.

Council Business Division 1
Legislative Council Secretariat
3 March 2003