

Legislative Council Bills Committee

Copyright (Amendment) Bill 2001

Scope of Liberalization under the Copyright (Amendment) Bill 2001

Purpose

The Bills Committee has requested the Administration to consider –

- (a) whether the scope of liberalization under the Copyright (Amendment) Bill 2001 should be narrowed to cover only commercial or business computer software; and
- (b) whether the Bill should be amended to prevent a feature film of less than 20 minutes in duration from being disguised as computer software and parallel imported into Hong Kong; and to prescribe a ‘percentage limit’ to allow part of a feature film to be embodied in the software.

2. This paper sets out the Administration’s response to the above-mentioned request. We also take the opportunity to respond to several submissions received that have raised similar issues. These include two received from the computer games industry (one having been copied to the Bills Committee – letter from the Clerk dated 21 October 2002 refers) and two from the music industry (letters from the Clerk dated 7 and 12 October 2002 refer).

Scope of liberalization

3. In last year’s public consultation on the proposed liberalisation of parallel importation of computer software, we received wide support from the public for the liberalisation of parallel importation of all types of computer software, including educational and recreational software.

4. In May 2001, we reported the outcome of the public consultation to the Legislative Council Panel on Commerce and Industry and sought its support for our proposal to liberalise parallel importation of all types of computer software. We also highlighted the concern expressed by the music and movie industries over the possible impact of the liberalisation

on them brought about by the convergence of computer software with music and movie products. We informed the Panel that we would carefully examine the treatment of computer software with movies and music when drafting the Bill, drawing on the experience of other jurisdictions where appropriate. The Panel unanimously supported our proposal.

5. It is against the above background that we prepared the Copyright (Amendment) Bill 2001. We included specific provisions in the Bill to prevent the parallel importation of movies (modelling on the Australian approach) and music recordings disguised as computer software. Before we finalised the Bill for introduction into the Legislative Council, we consulted the movie and music industries on those provisions in draft. While the music industry gave some technical comments on wording, both industries did not raise any objection in principle to including educational and recreational software within the scope of the liberalisation.

6. At the request of the Bills Committee, we have reflected on whether the scope of liberalisation should be limited to computer software for business or commercial purposes. Our considered view is that such limitation is undesirable. The beneficiary of a more competitive market for computer software - lower prices and more product and service choices - brought about by allowing parallel importation should not be confined to the business or commercial user. The current proposal will enable educational and household users to benefit as well. As the outcome of the public consultation has shown, there is a clear public demand for parallel importation of all types of computer software.

Feature film of less than 20 minutes

7. It is our policy to maintain the current restrictions on parallel importation of movies and music recordings. We are prepared to consider any necessary modifications to the Bill to meet this policy objective more effectively. We have no objection to the Bills Committee's suggestion to amend section 35A to prevent a feature film of less than 20 minutes from being disguised as computer software and parallel imported into Hong Kong, which is consistent with our policy objective. We have an open mind on other ways to address any specific concerns of the industry regarding the 20-minute rule provided that the Bill can achieve the wider objective of liberalising parallel importation of computer software with limited movie or music content.

Percentage limit

8. As regards the introduction of a percentage limit for feature films, we have indeed explored this option when drafting the Bill. We do not prefer this option in view of the fact that it is not uncommon for a feature film to be released with different lengths in different markets and different media channels. Such differences in length may create uncertainty for law enforcement.

Consultation with computer game industry

9. At the request of the Bills Committee, we have issued a letter to stakeholders of the computer game industry inviting them to give their views on the Bill. We received three written submissions (two were also copied to the Bills Committee) – one from the Interactive Digital Software Association representing US interactive digital games publishers, and two from local distributors of computer games. They oppose the proposed liberalisation mainly on the grounds that it will hurt distributors' business, increase piracy and discourage investment in marketing and product development in Hong Kong.

10. The views expressed in these submissions are largely similar to those expressed by opponents to the proposal during last year's public consultation. The reasons for their objection are not unique to the computer game industry. There is no evidence to suggest that the proposed liberalisation will adversely affect local computer game developers.

Response to further submissions from music industry

11. The music industry reiterates its demand that the current licensing regime for music recordings should be maintained, i.e. any computer software incorporating a music clip cannot be parallel imported, unless the licence for the use of the music clip in the computer software covers the territory of Hong Kong. In justifying its stance, the music industry argues that in practice music clips embodied in computer software are already licensed globally by the copyright owner. It is therefore unnecessary to make provisions in the Bill to allow for their parallel importation.

12. We have reservation on the music industry's demand. Acceding to the demand would create uncertainty for parallel importers of computer software incorporating music clips, as it will be difficult for a parallel importer to ascertain whether such music clips have been properly licensed or not. In addition, it may create a loophole for computer software

publishers to prohibit parallel importation of its products to Hong Kong by, say, assigning the licence for the music clip to its subsidiary in Hong Kong.

13. The music industry has further claimed that the proposed liberalisation will adversely affect potential development of business models based on advanced multimedia platform or technology. We have not seen any evidence that substantiates this claim.

Commerce and Industry Branch
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