

Legislative Council Bills Committee

Copyright (Amendment) Bill 2001

Impact of proposed liberalization by reference to industries and/or products likely to be affected

Purpose

This paper assesses the impact of the proposed liberalization under the Bill with reference to industries and/or products likely to be affected.

Liberalization covers computer programs and associated works

2. Parallel imported copyright works are currently regarded as “infringing copies” under section 35(3) of the Copyright Ordinance (“Ordinance”).

3. To allow importation and subsequent dealings in parallel imported computer software, section 35A(1) (proposed to be added to the Ordinance under section 3 of the Bill) provides, in effect, that a copy of a computer program would not be regarded as an infringing copy if it was lawfully made in the country, territory or area where it was made. A similar provision applies to works that are associated with computer programs (defined as an “associated work” in the Bill).

4. A copy of an “associated work” is any work (subject to certain exceptions) that is embodied in an imported article together with a computer program. Broadly speaking, these exceptions are feature films exceeding the prescribed duration and musical sound or visual recordings which are of predominant economic value to the article concerned (section 35A(3) proposed to be added by section 3 of the Bill).

5. Save for the exceptions in paragraph 4 above, where an imported article or product contains computer programs and other copyright works, the article could be parallel imported and subsequently dealt with as long as the article (together with the works therein) are lawfully made in their place of manufacture.

6. Apart from computer programs for business application, we believe that the copyright products set out in paragraphs 7 to 10 below are likely to be affected by the proposed liberalization.

Electronic publications

7. Publications in electronic format generally contain computer programs. After enactment of the Bill, these electronic publications (e.g. dictionaries, encyclopedia and magazines) could be parallel imported as long as they are lawfully made in their place of manufacture. The proposed liberalization could have an impact on publishers and local distributors of publications in electronic format.

Non-feature films

8. Many films are packaged in digital format which may contain a computer program (e.g. some DVDs). Feature films exceeding certain duration do not qualify as “associated works” and therefore could not be parallel imported. Non-feature films would, on the other hand, qualify as “associated works” and could be parallel imported if packaged as DVDs that contain a computer program.

9. A “feature film” is defined in section 35A(4) (proposed to be added to the Ordinance under section 3 of the Bill) as a film commonly known as a movie or a television drama. Films which are produced neither for release in cinemas nor for television broadcast as dramas will come within the scope of the proposed liberalization if packaged in digital media containing a computer program. These may include films produced to facilitate teaching or training in educational institutions (e.g. documentaries not shown in cinemas), films produced for instructional purposes generally (e.g. instructions on cooking or playing golf) and films produced for entertainment purposes (e.g. sports events, fund raising activities or variety shows). Producers and distributors of these non-feature films could be affected by the proposed liberalization.

Interactive computer software

10. Interactive computer software (including those produced for educational or recreational purposes) usually contains computer programs and some other copyright works (e.g. films; musical works; music recordings; artistic works including photographs and graphic works). Producers and distributors of interactive computer software (including educational software and computer games) would be affected by the proposed liberalization.

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