

Legislative Council Bills Committee

Copyright (Amendment) Bill 2001

Draft Committee Stage Amendments

Purpose

This paper sets out the draft Committee Stage Amendments (“CSAs”) (at the Annex) to the Copyright (Amendment) Bill 2001 (“Bill”) to be moved by the Secretary for Commerce, Industry and Technology, and seeks Members' endorsement of the CSAs.

Amendment to Clause 1(2)

2. The CSA replaces the reference to “Secretary for Commerce and Industry” by “Secretary for Commerce, Industry and Technology”.

Amendments to Clause 3

3. Under new section 35A(2) and (3)(a) in Clause 3 of the Bill, where a copy of a feature film (or part thereof) is embodied in a parallel-imported article containing a computer program, such copy as embodied in the article is regarded as a copy of an associated work if its duration when viewed does not exceed 20 minutes. As a copy of an associated work, it is exempted under the new section 35A(1)(b) from being an infringing copy by virtue of its parallel importation. A feature film is defined in section 35A(4) in Clause 3 as a film commonly known as a movie or a television drama.

4. The movie industry has expressed the view that section 35A(3)(a) as presently drafted will allow short movies packaged in the form of associated works to computer programs to be lawfully parallel imported into Hong Kong.

5. In relation to television dramas, there is a concern that the length of one episode in a television series is in many cases approximately 20 minutes. The proposed 20-minute restriction may be ineffective in preventing the parallel importation of television dramas of such lengths similarly packaged as associated works to computer programs.

6. Having regard to the above views and in consultation with the movie industry, we propose that the 20-minute test should be tightened up. We also propose that different tests should apply to movies and television dramas in view of the differences in the length of presentation for these two types of works.

New section 35A(2)(b)

7. The CSAs to section 35A(2)(b) are consequential amendments proposed in view of the insertion of section 35A(3), (3A) and (3B) in Clause 3, details of which are provided below.

New section 35A(3)

8. Under the proposed amendment, where a parallel-imported article contains a copy of any part of a movie, such copy will not be regarded as “a copy of an associated work” under the following circumstances:

- (a) the copy together with copies of other parts of the same movie embodied in the article (when viewed) constitute substantially the entire movie; or
- (b) the duration (when viewed) of the copy together with copies of other parts of the same movie embodied in the article exceeds 15 minutes.

New section 35A(3A)

9. In respect of television dramas, the test proposed is similar to that for movies except that the threshold is set at 10 minutes.

New section 35A(3B)

10. Section 35A(3)(b) under the Bill is re-numbered as section 35A(3B) as a result of the inclusion of section 35A(3) and (3A).

Section 35A(4)

11. As movies and television dramas are dealt with separately under the new sections 35A(3) and (3A), there is no need to provide a definition for “feature film”. A consequential change to the punctuation in the Chinese version of section 35A(4) is also made.

12. The definition of “musical visual recording” is slightly modified so that the meaning becomes clearer.

Amendments to Clause 4

New section 118A(1)(a)

13. The use of computer software usually requires the installation of the software into the user’s computer in the first place, and this necessarily involves the copying of the whole or part of the software. This copying, which would otherwise be an infringing act (if not permitted under the end user licence), is expressly permitted by section 61 of the Copyright Ordinance (“Ordinance”) in the case of a lawful user. In addition, sections 60 and 61 permits a lawful user to make a back-up copy of the computer program or to copy or adapt the program for his lawful use without infringing copyright in the program. A lawful user is defined in section 60(2) of the Ordinance as a person who has a contractual right to use the computer program in question.

14. It is considered possible that a developer of computer software could defeat the proposed liberalisation by imposing a condition in the end-user licence agreement which prohibits the use of the software in Hong Kong (i.e., a geographical restriction), thus preventing the user from being a lawful user for the purpose of sections 60 and 61. This will have the effect of defeating the proposed liberalisation. To ensure that the proposed liberalisation will not be defeated by such contractual restrictions, we have included the proposed section 118A(1)(a) in the Bill to deal with this situation. The effect of this subsection is that, for the purpose of criminal proceedings, a person shall be deemed to be a lawful user for the purposes of sections 60 and 61 of the Ordinance notwithstanding any terms restricting or prohibiting the use of the program in Hong Kong.

15. There are concerns from the software industry that the wording under the proposed section 118A(1)(a) is wider in scope than intended, and could be interpreted to cover restrictions in a software licence agreement that are other than purely geographical restrictions. To address these above concerns, we now propose rewording section 118A(1)(a) to make clear that it applies to geographical restrictions only. The software industry is content with the proposed revision.

Amendments to Clause 5

Sections 199A(1) and 199B(1)

16. The meaning of “copy of an associated work” is provided in section 35A(2) under Clause 3 of the Bill. This expression is also used in sections 118A, 199A and 199B under Clauses 4 and 5 of the Bill and references are made to section 35A for the meaning of the expression. CSAs to Clause 5 are now proposed in order to align the wording used in sections 199A and 199B with that of section 118A.

Advice Sought

17. Members are requested to endorse the proposed CSAs.

Commerce and Industry Branch
Commerce, Industry and Technology Bureau
December 2002

DRAFT

COPYRIGHT (AMENDMENT) BILL 2001

COMMITTEE STAGE

Amendments to be moved by the Secretary for Commerce,
Industry and Technology

| <u>Clause</u> | <u>Amendment Proposed</u> |
|---------------|--|
| 1(2) | By deleting "Secretary for Commerce and Industry" and substituting "Secretary for Commerce, Industry and Technology". |
| 3 | In proposed section 35A – (a) in subsection (2)(b), by deleting "subsection(3)" and substituting "subsections (3), (3A) and (3B)"; (b) by deleting subsection (3) and substituting – “(3) A copy of a work that is embodied in an article is not a copy of an associated work for the purposes of subsection (2) if the work is a film of the kind commonly known as a movie and if the copy – (a) is a copy of the movie in its entirety or substantially in its entirety; or (b) is a copy of a part of the movie (not being a part to which <u>paragraph (a)</u> applies), and – |

- (i) that part together with all other parts of the movie embodied in the article constitute the movie in its entirety or substantially in its entirety; or
- (ii) the duration of that part together with all other parts of the movie embodied in the article when viewed (as embodied in the article) constitute more than 15 minutes in aggregate.

(3A) A copy of a work that is embodied in an article is not a copy of an associated work for the purposes of subsection (2) if the work is a film of the kind commonly known as a television drama and if the copy –

- (a) is a copy of the television drama in its entirety or substantially in its entirety; or
- (b) is a copy of a part of the television drama (not being a part to which paragraph (a)

applies), and –

- (i) that part together with all other parts of the television drama embodied in the article constitute the television drama in its entirety or substantially in its entirety; or
- (ii) the duration of that part together with all other parts of the television drama embodied in the article when viewed (as embodied in the article) constitute more than 10 minutes in aggregate,

and in paragraphs (a) and (b)(i), reference to television drama, in the case of a television drama comprising one or more episodes, means an episode of the television drama.

(3B) A copy of a work that is embodied in an article is not a copy of an associated work for the purposes of subsection (2) if the work is a musical sound recording or a musical visual recording, and the economic value of the article is predominantly attributable to the

economic value of the copy, or to the combined economic value of all such copies, as embodied in the article.";

- (c) in subsection (4) –
 - (i) by deleting the definition of "feature film";
 - (ii) in the definition of "musical visual recording", by adding "the sound-track accompanying" after "part of";
 - (iii) in the Chinese text, in the definition of "音樂聲音紀錄", by deleting the semicolon and substituting a full stop.

4 By deleting proposed section 118A(1)(a) and substituting –

- "(a) in section 60(2), for the passage "contractual right to use the program" shall be substituted the passage "contractual right to use the program in Hong Kong (including in a limited part of Hong Kong) or in a place outside Hong Kong"; and".

5 (a) In proposed section 199A(1), by deleting the definition of "copy of an associated work" and substituting –

""copy of an associated work" (有聯繫作品複製品) has the same meaning as in section 35A;".

(b) In proposed section 199B(1), by deleting the definition of "copy of an associated work" and substituting –

""copy of an associated work" (有聯繫作品複製品) has the same meaning as in section 35A;".