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**Paper for the House Committee Meeting
of the Legislative Council
on 4 January 2002**

**Legal Service Division Report on
Copyright (Amendment) Bill 2001**

Object of the Bill

To amend the Copyright Ordinance (Cap. 528) (the Ordinance) so as to liberalize the parallel importation of computer program.

LegCo Brief Reference

2. CIB 07/09/6 issued by the Commerce and Industry Bureau dated 5 December 2001.

Date of First Reading

3. 19 December 2001.

Comments

4. Under section 118(1)(b) of the Ordinance, it is a criminal offence for any person, who without the licence of the copyright owner, imports into Hong Kong an “infringing copy” of a copyright work otherwise than for his private and domestic use.

5. Section 35 of the Ordinance defines what an “infringing copy” is. It includes a copy of a copyright work, though lawfully made outside Hong Kong, would have either infringed the copyright in that work or breached an exclusive licence agreement if it is to be imported into Hong Kong within 18 months after its first publication.

6. This Bill proposes to liberalize the parallel importation of one of the copyright works, i.e. a computer program. Clause 3 adds a new section 35A to the Ordinance. It excludes a copy of a computer program and its associated work which was lawfully made outside Hong Kong from the definition of an “infringing copy”. However,

if such copy of an associated work which is predominantly a film, a musical sound recording or a musical visual recording as defined in the Bill, it is not to be regarded as “a copy of an associated work” but remains as an “infringing copy”. By adding this new section 35A, civil and criminal liabilities in parallel importation into Hong Kong and subsequent dealings in a lawfully made computer program are removed.

7. Clause 5 adds new sections 199A and 199B to the Ordinance. New section 199A provides that no proceedings shall be instituted or continued in respect of an offence committed before the commencement in relation to a parallel-imported infringing copy of a computer program. It has the effect of applying the Ordinance as amended retrospectively to acts done before the commencement, unless a conviction has already been recorded. New section 199B provides that existing copy of a computer program that was parallel-imported into Hong Kong before the commencement is no longer to be regarded as an “infringing copy”.

Public Consultation

8. In paragraph 25 of the Brief, the Administration states that it has consulted the computer software industry and other interested parties. "A few are concerned about the interests of computer software distributors who have invested in providing value-added services such as training. Some also worry that the proposal will make investigation and prosecution of computer software piracy difficult."

9. Currently, the Administration is conducting a consultation exercise on a review of certain provisions of the Ordinance. Chapter 5 of the Consultation Document invites the public to express views on parallel importation of copyright works other than computer software. The Administration has not yet decided on whether to liberalize the parallel importation of other copyright works.

Consultation with the LegCo Panel

10. The Administration briefed the LegCo Panel on Commerce and Industry (LC Paper No. CB(1)1588/00-01(03)) on 26 June 2001. The Chairman of the Panel concluded that members supported the proposal to liberalize parallel importation of computer software, but the Administration should examine the proposal in detail and act with prudence. Members may refer to the Minutes of the meeting (LC Paper No. CB(1)2196/00-01) for details.

Conclusion

11. This Bill focuses on liberalizing the parallel importation of computer program and its associated works (except those associated works which are predominantly films, musical sound recordings or musical visual recordings) and not any other copyright works. Criminal and civil liabilities in the parallel importation of and subsequent

dealings in copies of computer programs are removed. The Bill also applies retrospectively to existing parallel imported copies of these computer programs. We are still scrutinizing the Bill. Members may wish to set up a Bills Committee to study the Bill in detail.

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