

立法會
Legislative Council

LC Paper No. CB(1) 1925/01-02
(These minutes have been seen
by the Administration)

Ref : CB1/PL/CI/1

Panel on Commerce and Industry

Minutes of Special Meeting
held on Thursday, 10 January 2002, at 2:30 pm
in the Chamber of the Legislative Council Building

- Members present** : Hon Kenneth TING Woo-shou, JP (Chairman)
Hon HUI Cheung-ching, JP (Deputy Chairman)
Dr Hon LUI Ming-wah, JP
Hon NG Leung-sing, JP
Hon Mrs Selina CHOW LIANG Shuk-ye, JP
Hon CHEUNG Man-kwong
Hon CHAN Kam-lam
Hon SIN Chung-kai
Hon CHOY So-yuk
Hon Henry WU King-cheong, BBS
Hon MA Fung-kwok
- Non-Panel Members attending** : Hon Eric LI Ka-cheung, JP
Hon CHAN Kwok-keung
Dr Hon Philip WONG Yu-hong
Hon Tommy CHEUNG Yu-yan, JP
Hon Audrey EU Yuet-mee, SC, JP
- Member absent** : Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
- Public officers attending** : Mr Kenneth C Y MAK
Deputy Secretary for Commerce and Industry
- Mr Philip CHAN
Principal Assistant Secretary for Commerce and Industry

Mr Stephen SELBY
Director of Intellectual Property

Mr Peter CHEUNG
Deputy Director of Intellectual Property

**Attendance by
invitation**

: Trade associations

Ms Carey CHAN
Executive Officer, The Chinese Manufacturers'
Association of Hong Kong

Mr CHENG Kai-ming
Vice-President, The Hong Kong Chinese Importers'
& Exporters' Association

Dr Hon Philip WONG
The Chinese General Chamber of Commerce

Copyright related organizations

Mr Elton YEUNG
Chief Executive Officer, Composers and Authors
Society of Hong Kong Limited

Ms CHAN Shuk-fong
Representative of Concern Group of Music Copyright
Ordinance

Mr Frank S RITTMAN
Regional Director, Asia/Pacific, Motion Picture
Association International

Mr Alan WONG
Vice-Chairman, Hong Kong Record Merchants
Association Limited

Mr Viking YAM
General Manager, Hong Kong Reprographic Rights
Licensing Society

Mr Woody TSUNG
Chief Executive, Hong Kong, Kowloon & New
Territories Motion Picture Industry Association
Limited

Mr Joseph LAI
Movie Producers & Distributors Association of Hong
Kong Limited

Ms Jane ENGLISH
Representative, Music Publishers Association of
Hong Kong Limited

Mr Ricky FUNG
Chief Executive Officer, International Federation of
Phonographic Industry (Hong Kong Group) Limited

Mr Tom ROBERTSON
Vice-President, Business Software Alliance Hong
Kong

Education bodies

Mr KAN Ki-leung
Honorary Treasurer, Grant Schools Council

Mr CHIU Cheung-ki
Vice-President, Hong Kong Private Schools
Association Limited

Mr TSANG Yee-hing
Member of Subsidized Primary Schools Council

Dr K S YUEN
Head of Educational Technology & Publishing Unit,
The Open University of Hong Kong

Mr CHIK Pun-shing
Deputy Chief Executive, The Hong Kong
Professional Teachers' Union

Mr HUI Chiu-fai
Service Department Officer, Hong Kong Federation
of Education Workers Limited

Mrs SUN PONG Tak-ling
Honorary Secretary, Hong Kong Subsidized
Secondary Schools Council

Dr Kevin K H PUN
Associate Professor, Department of Computer
Science and Department of Law, The University of
Hong Kong

Mr Jacob LEUNG
Secretary, The Chinese University of Hong Kong

Mr Adrian CHEUNG
Assistant Director (Media Relations), Office of
University Development and Public Affairs, The
Hong Kong University of Science and Technology

Mr Barry BURTON
University Librarian, The Hong Kong Polytechnic
University

Mr Patrick T H KWONG
Director of University Publications Office, City
University of Hong Kong

Mr CHIU Ping-kwan
Director of General Administration, Hong Kong
Baptist University

Mr Tommy YEUNG
Associate Librarian, Lingnan University

Ms Connie WONG Tsz-mei
Resources & Administration Services Manager, the
Hong Kong Institute of Education

Dr Colin STOREY
University Librarian, The Chinese University of
Hong Kong

Newspapers and related organizations

Mr Gary LAU
Representative of Hong Kong News Clipping
Industry Working Committee

Mr Eric LAI
Representative of The Newspaper Society of Hong
Kong and The Hong Kong Copyright Licensing
Association

Television, radio and broadcasting companies

Mr Desmond CHAN
Corporate Lawyer, Hong Kong Cable Television
Limited

Ms Karen WAN Po-yee
Legal Counsel, Television Broadcasts Limited

Other organizations

Mr LEUNG Kwong-wing
President, Hong Kong Blind Union

Ms Jenny CHEUNG
Managing Director, Blockbuster Hong Kong Limited

Mr Fred LEUNG
Division Head (Rehabilitation), The Hong Kong
Society for the Blind

Mr Barry WILL
Representative of Hong Kong Institute of Architects

Mr Fred YEUNG
Executive Committee Member, Hong Kong Public
Relations Professionals' Association Limited

Mrs CHAN WONG Shui
Chief Executive, Consumer Council

Mr Henry WHEARE
Representative of Intellectual Property Committee,
Law Society of Hong Kong

Clerk in attendance : Ms Connie SZETO
Chief Assistant Secretary (1)4

Staff in attendance : Miss Anita HO
Assistant Legal Advisor 2

Mr TSANG Siu-cheung
Senior Assistant Secretary (1)7

Consultation Document on “Review of Certain Provisions of Copyright Ordinance”

I Meeting with deputations

The Chairman welcomed the 41 deputations attending the meeting to present their views on the Consultation Document on “Review of Certain Provisions of Copyright Ordinance” (Consultation Document) published by the Administration in November 2001. Invitation letters were sent to 87 organizations and so far 41 submissions were received. These submissions had been forwarded to members and the Administration for information before the meeting.

(A) Presentation of views by deputations

2. The Chairman invited representatives of deputations attending the meeting to present their views on the Consultation Document. Their views were summarized below.

3. The Hong Kong Chinese Importers’ & Exporters’ Association (HKCIEA) (LC Paper No. CB(1) 683/01-02(01))

- (a) HKCIEA considered that criminal sanction should not apply to the use of an infringing copy of a copyright work in “business” activities of a non-profit-making nature. Employees in possession of an infringing copy supplied by the employer for use in business should not be criminally liable. The end-user criminal provisions should only apply to copyright works afflicted by rampant piracy. Certain acts of the end-user which infringed copyright but did not give the end-user any commercial advantage or private financial gain should be exempted from criminal liability. The expression “or in connection with, any trade or business” introduced by the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 (“the Amending Ordinance”) should be removed.
- (b) Copyright owners and the education sector should work out together certain non-statutory guidelines to clarify the meaning of “to a reasonable extent” and “passages” in sections 41 and 45 of the Copyright Ordinance. The adoption of a statutory approach to clarify the two expressions stated above lacked flexibility, which might fail to fully convey the specific meaning concerned. As for permitted acts for educational purposes, copying of works in small quantities and uploading them onto the Intranet for access within schools should be allowed.
- (c) No matter whether licensing bodies had given their authorization or not, the Administration should provide statutory exemptions for the transcribing of copyright works in the printed format into Braille, large-print, talking or other specialized formats by non-profit-

making bodies for the exclusive use of visually impaired persons.

- (d) On permitted acts related to free public showing or playing of broadcast or cable programme, if the public did not have to pay any fees for watching or listening to the programme, such activities would not infringe copyright and should be exempted from criminal liability. This exemption should also be extended to cover all underlying copyright works included in the broadcast or cable programme as well as all public places where the broadcast or cable programme was shown or played.
- (e) HKCIEA did not support the removal of the civil liability and criminal sanction against parallel importation of and subsequent dealing in all types of copyright works as well as the provision of exceptions. The current 18-month threshold for parallel importation of copyright works should be shortened. The civil liability and criminal sanction imposed on end-users of parallel imported copies of copyright works in business should not be removed.
- (f) As regards unauthorized reception of subscription television programmes, civil remedy, instead of criminal sanction, should be introduced against fraudulent reception of subscription television programmes to solve the problem. It was necessary to introduce criminal sanction against the possession of an unauthorized decoder for commercial purposes.
- (g) In view of the substantial cost involved in litigation, the Copyright Tribunal should not be replaced with an arbitration system to adjudicate disputes between copyright users and licensing bodies. Licensing bodies should be mandated under the law to register and to publish their scales of royalty charges so as to increase their transparency.

4. The Chinese General Chamber of Commerce (CGCC)

(The submission was tabled at the meeting and subsequently circulated to members for reference vide LC Paper No. CB(1) 796/01-02(02) on 14 January 2002.)

- (a) CGCC supported the liberalization of parallel-imported computer software.
- (b) A distinction should be drawn between infringing acts of a profit-making and a non-profit-making nature. While criminal sanction should be introduced against the former, civil remedy would be more appropriate for the latter.

- (c) A favourable business environment was important to economic development. Thus, inconsidering the need to introduce criminal sanction against infringing acts, the Administration should not overlook the impact on the development and investment incentives of enterprises.
- (d) In the long run, social education was particularly important in solving the problem of copyright infringement.

5. Composers and Authors Society of Hong Kong Limited (CASH)
(LC Paper Nos. CB(1) 683/01-02(03) and 743/01-02(04))

- (a) CASH had reservation on the proposal to allow organizations to play musical works in public places without paying royalties and obtaining prior permission of the copyright owners concerned by excluding such acts from infringing acts.
- (b) The European Community had complained to the World Trade Organization (WTO) in recent years about the exemptions provided in the copyright legislation of the United States (US) for the acts proposed above. WTO ruled that such exemptions violated the relevant copyright legislation. Hong Kong should conform to international standard on the copyright issue.
- (c) CASH agreed that the playing of musical works for educational, religious and charitable purposes should be exempted from paying the required royalty charges. However, as for the playing of musical works on a commercial basis, similar exemptions would seriously undermine the composers' interests.

6. Concern Group of Music Copyright Ordinance (CGMCO)

(The submission was tabled at the meeting and subsequently circulated to members for reference vide LC Paper No. CB(1) 796/01-02(04) on 14 January 2002.)

- (a) CGMCO, which represented eight major trade associations (including those of hotels, shopping malls, karaoke lounges, restaurants, fast food shops, clinics, the film and retail industries), supported the exclusion of free public showing or playing of broadcast or cable programme from infringing acts.
- (b) Due to the wide use of information and broadcasting equipment nowadays, various trades and industries would certainly have to shoulder additional burden on their operation if they were required to pay royalties for the above acts. Both Japan and Singapore provided exemptions for background music. The Administration had to take into account the acceptability of the community when

amending the relevant legislation. The meaning of “permitted acts related to free public showing or playing of broadcast or cable programme” should also be clearly defined for easy compliance by the industries.

- (c) On the issue of licensing bodies, CGMCO supported that licensing bodies should be mandated to register and to publish their scales of royalty charges to enhance their transparency. Furthermore, a tripartite arbitration mechanism should be established to replace the existing Copyright Tribunal so that copyright users and licensing bodies could appoint an adjudicator with professional knowledge on copyright matters to adjudicate their disputes.

7. Motion Picture Association International (MPAI)
(LC Paper No. CB(1) 683/01-02(05))

- (a) MPAI supported in principle the criminal provisions related to end-user piracy. Instead of restricting to copyright works afflicted by rampant piracy, criminal sanction related to end-user piracy had to be equally applicable to all types of copyright works. The use of infringing copies of copyright works in profit-making business activities should also be subject to criminal sanction.
- (b) Regarding unauthorized reception of subscription television programmes, the failure of the Administration in making fraudulent reception of subscription television programmes a criminal offence or introducing civil remedies would eventually undermine the protection given to the copyright owners and harm their interests.
- (c) MPAI objected to liberalizing parallel importation of copyright works (e.g. books, magazines, films and musical recordings) other than computer software. The civil liability and criminal sanction against parallel importation of such works under the existing legislation should be retained. Liberalizing parallel importation of copyright works other than computer software would only result in more rampant infringing activities. Overseas experience had indicated that liberalizing parallel importation did not necessarily bring down the prices of the copyright works concerned.

8. Hong Kong Record Merchants Association Limited (HKRMA)
(No written submission had been provided.)

- (a) HKRMA expressed concern about liberalizing parallel importation of copyright works other than computer software, especially musical recordings, as this would further aggravate the prevailing piracy problem.

- (b) Parallel-imported musical recordings of copyright works would make it difficult for HKRMA members and wholesalers to differentiate “legitimate” and “parallel-imported” products. As a result, they might be caught unaware easily.

9. Hong Kong Reprographic Rights Licensing Society (HKRRLS)
(LC Paper No. CB(1) 683/01-02(04))

- (a) To a certain extent, the existing Copyright Ordinance was able to balance the interests of all parties and provide proper protection to copyright owners. The interests and needs of different parties would not necessarily be fully taken care of even with a statutory approach. On the whole, the Administration should minimize its intervention on copyright protection in business activities.
- (b) Given the far-reaching impact of the criminal provisions related to end-user piracy, the Administration should fully consider the public’s views in this regard.
- (c) HKRRLS had so far adopted an open attitude towards the authorization for educational bodies and had made flexible arrangements. HKRRLS would like to enlist teachers’ assistance on copyright education so as to protect the interests of copyright owners.
- (d) The Administration should monitor closely the development of the copyright issue concerning the works published on the Internet, and the rights and responsibilities thus arising.
- (e) In reviewing the Copyright Ordinance, the Administration should also take into account the civil law reform in order to tie in with the rights and obligations on copyright issues.

10. Hong Kong, Kowloon & New Territories Motion Picture Industry Association Limited (MPIA)
(No written submission had been provided.)

- (a) On parallel importation of film products, the 18-month threshold under the existing Copyright Ordinance should be retained. Although the public was concerned that prices would be propped up by restricting parallel imports, actual experience showed that the prices of film products had fallen since the implementation of the restriction in parallel importation measures in 1997.
- (b) With the film industry’s current window system and the restriction on parallel importation, recovery of high production costs by film producers and distributors could be ensured effectively.

- (c) If parallel importation was liberalized, unscrupulous businessmen might repackage the “parallel imports” as “legitimate” products and ship them back to Hong Kong for sale. This would adversely affect the interests of local copyright owners of film products. The Customs and Excise Department would also face a certain degree of difficulty in its combat against pirated film products.
- (d) Most countries in the world which had their own film industries imposed similar restrictions on parallel importation. Maintaining such restrictions was reasonable and in line with international practice.
- (e) On exempting the education and social welfare sectors from obtaining authorization for using film products for non-profit-making purposes, MPIA had so far adopted an open attitude.
- (f) Criminal sanction should be introduced against unauthorized reception of subscription television programmes by fraudulent means.

11. Movie Producers & Distributors Association of Hong Kong Limited (MPDAHK)
(LC Paper No. CB(1) 683/01-02(06))

- (a) MPDAHK had been opposing the parallel importation of film products as it would seriously undermine the interests of film producers and distributors.
- (b) The Administration should critically consider setting up a comprehensive registration system for intellectual property rights with a view to solving thoroughly the conflicts and disputes between copyright owners and users.

12. Music Publishers Association of Hong Kong Limited (MPAHK)
(LC Paper No. CB(1) 743/01-02(02))

- (a) As royalties were songwriters’ main source of income, the existing copyright legislation should protect the commercial value of these songs to safeguard songwriters’ interests.
- (b) Regarding criminal provisions related to end-user piracy, the possession of infringing copies of copyright works for personal or domestic uses should not be made a criminal offence.

- (c) Instead of restricting to copyright works afflicted by rampant piracy, the criminal provisions should apply to all types of copyright works.
- (d) MPAHK agreed that appropriate exemptions could be granted to educational, government and non-profit-making organizations having regard to the actual situation.
- (e) As for permitted acts related to free public showing or playing of broadcast or cable programme, the Administration should not extend the exemption to cover all underlying copyright works included therein, especially songs, so as to protect the interests of the composers.
- (f) MPAHK strongly objected to liberalizing parallel importation of copyright works (e.g. songs) other than computer software as it would aggravate the piracy problem concerned. Liberalizing parallel importation of copyright works did not necessarily result in lower prices. On the contrary, the sales of legitimate products would be directly affected by the influx of “parallel imports” in the market, which would undermine the interests of the composers.

13. International Federation of Phonographic Industry (Hong Kong Group) Limited (IFPI)
(LC Paper Nos. CB(1) 683 and 995/01-02)

- (a) The 18-month threshold for the parallel importation of copyright products under the current Copyright Ordinance would not have any serious impact on the supply and circulation of these products. Even if all restrictions on parallel importation were lifted, it might not result in a sharp decrease in product prices.
- (b) Given that most records sold in Hong Kong were produced locally, liberalizing parallel importation would lure unscrupulous businessmen to ship records for export back to Hong Kong for sale. This would disturb the normal operation of the local record market.
- (c) Importers might also buy pirated products unawarely, which would further aggravate local piracy problem.

14. Business Software Alliance Hong Kong (BSAHK)
(LC Paper No. CB(1) 768/01-02(01))

- (a) Under a knowledge-based economy, computer software was widely used in Hong Kong by various industries to facilitate their business development. As infringing acts were a serious blow to investor's incentives and had a negative impact on the software development

industry, it was necessary to introduce criminal provisions related to end-user piracy as a deterrent.

- (b) The possession of an infringing copy of a copyright work in the course of business should be subject to criminal sanction no matter whether it was of a profit-making or non-profit-making nature.
- (c) Employees who knowingly possessed an infringing copy of a copyright work supplied by the employer for use should be criminally liable, otherwise the legal effect of the Copyright Ordinance would be undermined.

15. Grant Schools Council (GSC)

(No written submission had been provided.)

- (a) While recognizing the spirit and principle of intellectual property rights protection under the existing Copyright Ordinance, GSC hoped that the Administration would grant appropriate exemption to educational activities so that teachers could have more freedom and room in preparing teaching materials.
- (b) GSC suggested that the Administration should, on behalf of the education sector, negotiate collectively with the existing licensing bodies on authorization arrangements and royalty charges.

16. Hong Kong Private Schools Association Limited (HKPSA)

(No written submission had been provided.)

- (a) Instillation and dissemination of knowledge as well as innovation were important to the development of a society. While protecting intellectual property rights, the Administration should provide convenience and exemption for educational activities as appropriate.
- (b) In reviewing the Copyright Ordinance, the Administration should be mindful of striking a reasonable balance between copyright protection and the conduct of educational activities.
- (c) It was necessary to teach students about the importance of copyright protection.

17. Subsidized Primary Schools Council (SPSC)

(No written submission had been provided.)

- (a) Infringing acts unintentionally committed by teachers in the course of educational activities should not be regarded as criminal offence, otherwise it would have a negative effect on such activities.

- (b) SPSC supported that the Administration should provide appropriate exemption to the education sector.
- (c) SPSC supported the setting up of a licensing system to deal with collective authorization for schools.

18. The Open University of Hong Kong (OUHK)
(LC Paper No. CB(1) 683/01-02(07))

- (a) The Administration should exempt the use of an infringing copy of a copyright work in activities of a non-profit-making nature from criminal liability.
- (b) Employees in possession of an infringing copy supplied by the employer for use in business should not be criminally liable.
- (c) The criminal provisions related to end-user piracy should apply only to copyright works afflicted by rampant piracy. Certain acts of the end-user which infringed copyright but did not give the end-user any commercial advantage or private financial gain should be exempted from criminal liability.
- (d) The expression "or in connection with, any trade or business" used in the existing Copyright Ordinance, which was vague and general, should be removed.
- (e) OUHK objected to adopting a statutory approach to define the meaning of "to a reasonable extent" and "passages" in sections 41 and 45 of the Copyright Ordinance. Some specific guidelines should be put in place.
- (f) The acts of recording and copying as mentioned in sections 41 and 45 of the Copyright Ordinance should be permitted no matter licences under licensing schemes were available or not.
- (g) For the purpose of education, teachers should be allowed to upload copyright works reasonably onto the school's Intranet for access by teachers and students.
- (h) The law should permit copyright works to be transcribed into suitable formats for use by visually impaired persons no matter whether licences under licensing schemes were available or not.
- (i) Regarding permitted acts related to free public showing or playing of broadcast or cable programme, OUHK supported that the statutory exemption in paragraph 4.2 of the Consultation Document

should be extended to cover all underlying copyright works included in the broadcast or cable programme.

- (j) OUHK objected to the replacement of the Copyright Tribunal by an arbitration system to adjudicate disputes between copyright users and licensing bodies.
- (k) Licensing bodies should be mandated to register and to publish their scales of royalty charges to enhance their transparency.

19. The Hong Kong Professional Teachers' Union (HKPTU)
(LC Paper No. CB(1) 683/01-02(08))

- (a) The Administration should provide appropriate exemption for educational activities under certain circumstances, including activities of a non-profit-making nature and those which would not undermine the reasonable interests of copyright owners.
- (b) HKPTU supported the setting up of a licensing scheme which should be compatible with the principle of providing exemption for educational purposes.
- (c) The Administration should exercise stringent control over the licensing scheme in order to assist the education sector in dealing with collective authorization.
- (d) The Administration should not adopt a broad-brush approach by prohibiting schools from uploading copyright works onto the Intranet for access within schools on the ground of copyright infringement.
- (e) On the whole, the principle of "fair use" should be applied when consideration was given to granting appropriate exemption for educational activities.

20. Hong Kong Federation of Education Workers Limited (HKFEW)

(The submission was tabled at the meeting and subsequently circulated to members for reference vide LC Paper No. CB (1)796/01-02(03) on 14 January 2002.)

- (a) HKFEW welcomed the Administration's proposal to consider granting exemption for permitted acts for educational purposes.
- (b) The meaning of "to a reasonable extent" and "passages" in sections 41 and 45 of the Copyright Ordinance should be clearly defined. Reference could be made to the US approach by formulating clear non-statutory guidelines for compliance by education workers.

- (c) Regarding the authorization for photocopying newspapers, the Education Department should represent education institutions under its purview to negotiate collectively with major newspapers on a uniform licensing arrangement.
- (d) On the use of information on the Internet for educational purposes, HKFEW suggested that the Administration should adopt a lenient approach by granting users appropriate exemptions.

21. Hong Kong Subsidized Secondary Schools Council (HKSSSC)

(The submission was tabled at the meeting and subsequently circulated to members for reference vide LC Paper No. CB (1)796/01-02(05) on 14 January 2002.)

- (a) The Copyright Ordinance should protect the interests of both copyright owners and copyright users as well as striking a suitable balance between the two.
- (b) HKSSSC supported retaining the provisions related to exemption for educational purposes under the existing Copyright Ordinance so that teachers could use copyright works reasonably for non-profit-making and teaching purposes without any worries.
- (c) A government-regulated licensing scheme under which royalties were negotiated collectively should be established to save schools the trouble of negotiating with copyright owners for the use of copyright works. The reasonable extent of permitted use for educational purposes should be worked out together by copyright owners, schools and the Administration.

22. Task Force on Reprographic Rights Licensing, Heads of Universities Committee (HUCOM) and The Joint University Libraries Advisory Committee (JULAC) (Task Force)

(The group represented seven universities, namely The University of Hong Kong, The Chinese University of Hong Kong, The Hong Kong University of Science and Technology, The Hong Kong Polytechnic University, City University of Hong Kong, Hong Kong Baptist University, Lingnan University and Hong Kong Institute of Education)
(LC Paper Nos. CB(1) 683/01-02(09), 683/01-02(10), 743/01-02(03) and 744/01-02 (01))

- (a) The existing Copyright Ordinance should strike a balance between the interests of copyright owners and copyright users.
- (b) The principle of “fair dealing” in the Copyright Ordinance was too restrictive. It only allowed the copying of a copyright work to a

reasonable extent for the purposes of research, private study, criticism, review and news reporting. The Task Force suggested that the Administration should adopt the “fair use” model under the US copyright law by extending the scope of reasonable extent to include educational purposes to facilitate the development of academic research.

- (c) Clear statutory guidelines should be formulated on the definition of “a reasonable extent” in sections 41 and 45 of the Copyright Ordinance. For example, the permitted scope and quantity of copying should be specified to prevent teachers and students who made copies beyond the relevant scope from violating the law.
- (d) Regarding the acts of recording or copying as mentioned in sections 41 and 45 of the Copyright Ordinance, the Task Force considered that these acts should be permitted no matter whether licences under licensing schemes were available for such acts or not.
- (e) With the development of information technology, “a reasonable extent” under the Copyright Ordinance should not only apply to the making of printed copies of a copyright work but also to electronic copies as well.
- (f) The Task Force recommended that a Working Group with broad representation be formed to formulate guidelines on educational use of the Internet in short run. It should also closely monitor the impact of the development of information technology and give advice accordingly.
- (g) University libraries should be allowed to upload academic research materials for educational purposes onto the Intranet for access by teachers, staff and students. Such acts should not be regarded as infringing the copyright.
- (h) The Task Force supported liberalizing parallel importation of copyright works other than computer software to allow university libraries to obtain books and magazines more quickly by lawful means for teaching and research purposes.
- (i) The Task Force supported establishing a registration system for licensing bodies to be regulated by the Government to enhance its transparency.

23. Hong Kong News Clipping Industry Working Committee (HKNCIWC)
(LC Paper No. CB(1) 701/01-02(02))
- (a) The revenue of news clipping companies mainly came from the service they provided which enabled their customers to grasp the required information effectively. They did not rely on photocopying newspapers and magazines in large quantities to make a profit. Hence, the newspaper clipping industry would not undermine the interests of the newspaper industry.
 - (b) Although most news clipping companies were willing to pay reasonable royalties, they usually had to pay high charges due to their lack of bargaining power vis-à-vis newspaper agencies. HKNCIWC hoped that as long as intellectual property rights were being protected, the Administration should exercise discretion in handling authorization issue faced by the news clipping industry which is essential to its survival.
24. The Newspaper Society of Hong Kong (NSHK) and
The Hong Kong Copyright Licensing Association (HKCLA)
(LC Paper No. CB(1) 683/01-02(11))
- (a) Both NSHK and HKCLA considered that newspapers, like other copyright works, should enjoyed the same statutory protection so as to uphold the principle of fairness under the law. To treat different copyright works separately and provide them with various degree of statutory protection was a dangerous act and violate the principle of fairness in the society.
 - (b) Criminal liability should only apply to infringing acts of a serious nature to avoid hindering the free flow of information.
 - (c) The scope of criminal liability and the relevant exemption should be clearly defined for compliance by the general public to minimize unnecessary doubts on authorization issues in the community.
25. The Hong Kong Cable Television Limited (HK Cable)
(LC Paper No. CB(1) 743/01-02(05))
- (a) HK Cable supported the proposal that criminal sanction should apply to fraudulent reception of subscription television programmes. As there were loopholes in the existing legislation, many unauthorized decoders were still available for sale in the market. The fines for the sale of unauthorized decoders were too low to achieve a deterrent effect. Even with enhanced enforcement actions, the problem of pirated viewing of subscription television

programmes might not be solved completely. The existing civil remedy was also inadequate to tackle pirated viewing.

- (b) Fraudulent reception of subscription television programmes did not merely concern individuals' interests. It would impact the revenue of HK Cable directly. The profits tax payable to the Government by the company would also be reduced indirectly.
- (c) Pirated viewing would discourage the operators of cable television programmes from investing in Hong Kong. In the long run, there would be fewer programmes available for audience's choice.

26. Law Society of Hong Kong (LSHK)
(LC Paper No. CB(1) 683/01-02(13))

- (a) LSHK supported the proposal that criminal provisions related to end-user piracy under the Copyright Ordinance should apply to all types of copyright works. An infringing act should not be considered as a criminal offence unless the user committed the act with intent.
- (b) The Administration should provide specific guidelines to clarify the principles of "to a reasonable extent" and "fair use" under the Copyright Ordinance for compliance by the public.
- (c) There must be a sufficient number of licensing schemes to facilitate copyright users to obtain the required authorization.
- (d) On parallel importation, LSHK was in favour of retaining the existing civil remedy in dealing with the copyright issue related to parallel imports.
- (e) Mandatory registration of licensing bodies and the requirement to publish their scales of royalty charges would enhance their transparency.
- (f) It was unnecessary to replace the existing Copyright Tribunal with an arbitration system. Consideration should be given to further expanding the role of the Copyright Tribunal to provide feasible solutions for disputes between copyright users and licensing bodies.

27. The Hong Kong Blind Union (HKBU)
(LC Paper No. CB(1) 683/01-02(15))

- (a) HKBU supported a new permitted act under the Copyright Ordinance to provide for the transcribing of copyright works in the

printed format into Braille, large-print, talking or other specialized formats by non-profit-making bodies for the exclusive use of visually impaired persons where no such transcriptions were commercially available in Hong Kong within a reasonable time or at a reasonable price.

- (b) With the development and the growing popularity of information technology, the transcribing of copyright works in electronic form should also be included as permitted acts.
- (c) The Administration should consider providing exemption for the transcribing of copyright works for visually impaired persons. These acts should be regarded as permitted acts and exempted from paying royalties no matter whether licences under licensing schemes were available or not.

28. Blockbuster Hong Kong Limited
(LC Paper No. CB(1) 683/01-02(14))

- (a) With the development of the Internet and the growing popularity of online shopping, the restriction on parallel importation was not as efficient in controlling the spread of pirated products as expected. The Administration should fully liberalize parallel importation of audio-visual products to provide consumers with more choices at reasonable prices. This would in turn stimulate consumers' desire to purchase legitimate products and suppress rampant piracy.
- (b) When liberalizing parallel importation, the Administration should step up in combating piracy with the imposition of more severe penalty to enhance the deterrent effect.

29. The Hong Kong Society for the Blind (HKSB)
(LC Paper No. CB(1) 683/01-02(17))

- (a) HKSB supported that a new permitted act should be provided for the transcribing of copyright works in the printed format into Braille, large-print, talking or other specialized formats by non-profit-making bodies for the exclusive use of visually impaired persons. However, such acts could be permitted and exempted only where no such transcriptions were commercially available in Hong Kong within a reasonable time or at a reasonable price.
- (b) HKSB agreed that the above transcribing acts should be permitted no matter whether licensing schemes for authorizing those acts were available or not.

30. Hong Kong Institute of Architects
(LC Paper No. CB(1) 683/01-02(16))
- (a) The copyright of local buildings should belong to the architects concerned. The Administration should formulate measures to ensure the proper protection of such copyright.
 - (b) If the image of a building was used for profit-making purposes, the user should pay royalty at a reasonable rate. All moneys thus raised would be placed in a general fund for the improvement of the environment of Hong Kong.
 - (c) No royalty should be paid for personal use of any building image or for non-profit-making purpose by the public such as taking photographs as a hobby.
31. Hong Kong Public Relations Professionals' Association Limited (HKPRPA)
(LC Paper No. CB(1) 730/01-02(01))
- (a) HKPRPA objected to imposing criminal sanction on photocopying newspapers by organizations for non-profit-making purposes as it would adversely affect the work of public relations professionals.
 - (b) To facilitate the free flow of information, photocopying newspapers in organizations for internal reference or reasonable circulation should not attract any criminal liability.
 - (c) Employees in possession of an infringing copy of a copyright work supplied by the employer for use in business should not be criminally liable.
 - (d) Criminal provisions related to end-user piracy should apply only to copyright works afflicted by rampant piracy.
 - (e) Certain acts of the end-user which infringed copyright but did not give the end-user any commercial advantage or private financial gain should be exempted from criminal liability.
 - (f) The expression "or in connection with, any trade or business" used in the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 should be removed to avoid extending the scope of end-users' criminal liability.

32. Consumer Council (CC)

(LC Paper No. CB(1) 743/01-02(01))

- (a) When introducing legislation to safeguard the interests of copyright owners, the interests of consumers should also be taken into account so as to strike a balance between the two.
- (b) In view of the widespread piracy in the market, the public might be misled or deceived into violating the law unknowingly upon the introduction of criminal provisions related to end-user piracy. The existing provision should be retained so that criminal sanction would only be imposed on persons engaging in infringing activities.
- (c) CC opposed to criminalizing unauthorized reception of subscription television programmes and recommended that the problem should be rectified through social education and technological advancement.
- (d) Regarding free public showing or playing of broadcast or cable programme, the exemption should be extended to cover all underlying copyright works included in the broadcast or cable programme. Public places where the broadcast or cable programme was shown or played, except where such services were supplied at a price, should be exempted from criminal liability.
- (e) CC supported the Administration in liberalizing parallel importation of copyright works other than computer software to provide consumers with more choices.
- (f) The Copyright Tribunal should be retained to adjudicate disputes between copyright owners and users.
- (g) CC supported the setting up of a registration system for licensing bodies, all of which should be regulated by the Copyright Tribunal. Individual licensing bodies should also formulate their codes of practice to enhance their transparency.

(B) Exchanging views with deputations

33. The Chairman invited questions from members on the views expressed by the deputations.

34. Mr SIN Chung-kai supported in principle the provision of appropriate copyright exemption to facilitate the conduct of educational activities. However, he was concerned about the difficulties in identifying whether an act was for the

purpose of education or making profit in actual situations. Furthermore, as electronic books would become the dominant trend in future, Mr SIN considered it necessary to critically examine the copyright issue involved and the related exemption for educational purposes. Mr CHIK Pun-shing, Deputy Chief Executive of HKPTU responded that exemption should not be provided for copying acts purely for commercial purposes. Moreover, a school which uploaded the full contents of a book onto the Intranet for access within the school would commit an infringing act as this would undermine the reasonable interests of the copyright owner. On the contrary, uploading the extracts of a book onto the Intranet would not infringe copyright and should be exempted.

35. Mr Patrick T H KWONG and Dr Kevin K H PUN, representatives of the Task Force agreed that uploading the full contents of a book onto the Intranet was obviously beyond “a reasonable extent” and should not be regarded as exempted acts for educational purposes. In fact, such acts directly affected the sales of the book concerned and seriously hampered the interests of the copyright owner. On uploading copyright works onto the Intranet in electronic form for educational purposes, all universities had indicated that they were willing to pay the royalty charges concerned.

36. Mr Viking YAM, General Manager of HKRRLS advised that at present, a mechanism had already been in place to grant authorization in relation to photocopying of books. He stressed that the authorization arrangements should be worked out by copyright owners and users while the Administration should keep its intervention to the minimum.

37. Mr Tommy CHEUNG enquired CASH about the distribution of royalties received from songs. Mr Elton YEUNG, Chief Executive Officer of CASH responded that CASH distributed the royalties to the composers and authors concerned through similar copyright organizations in different places. The accounts of the distribution were detailed in CASH’s annual report for public information.

38. In response to Mr HUI Cheung-ching’s enquiry on the types of royalties, Mr Elton YEUNG advised that the royalties CASH received were classified into two main categories, namely the royalties for the songs and the charges for the rights to broadcast the songs in public. For control purpose, the audited accounts setting out the royalties being charged would be detailed in CASH’s annual report for public information to enhance its transparency. Interested individuals or organizations could obtain more information on the royalties of songs from CASH’s website. Application forms for all kinds of authorization could also be downloaded from the website. In addition, members of the public could obtain these forms by phone or from CASH in person.

39. In response to Mr Tommy CHEUNG’s enquiry on the exemptions provided in the US copyright law (particularly the scope of homestyle

exemptions) and WTO's ruling on these exemptions, CASH undertook to provide the relevant information to the Panel for reference after the meeting.

(Post-meeting note: The information provided by CASH on the exemptions in the US copyright law and WTO's ruling were issued to members for reference vide LC Paper No. CB(1) 812/01-02 on 15 January 2002.)

40. Mrs Selina CHOW remarked that although most of the organizations attended the meeting supported liberalizing restrictions on parallel importation to provide consumers with more choices of products at lower prices, according to international experience such restrictions still existed in many advanced countries, e.g. US. Hence, she hoped that the Administration and the industry could examine carefully the need to remove the restrictions.

41. In response to Mrs Selina CHOW's view, Mrs CHAN WONG Shui, Chief Executive of CC said that under the free market principle, restrictions on parallel importation were detrimental to competition. She pointed out that as "parallel imports" were not infringing products, they should be allowed free circulation without geographical restrictions. This could prevent businessmen from carving up and manipulating the market.

42. Mr Alan WONG, Vice-Chairman of HKRMA did not support to liberalize parallel importation. In view of the time gap in the release of records in different places and the differences in exchange rate of Hong Kong dollar with other currencies, allowing "parallel imports" to be brought back to Hong Kong for sale would undermine the competitiveness of local legitimate products. Mr Frank RITTMAN, Regional Director, Asia/Pacific, MPAI considered that liberalizing parallel importation would give rise to vicious competition in the market for local products. In the long run, it would affect the business development of the products concerned. Dr Kevin K H PUN held the view that in contemplating the removal of restrictions on parallel importation, the relevant economic considerations and the interests of individuals/bodies in different sectors as well as legal justifications had to be taken into account.

II Meeting with the Administration

43. The Chairman invited the Administration to provide a preliminary response to the views expressed by the deputations and members.

44. The Deputy Secretary for Commerce and Industry (DSCI) welcomed the views expressed by the deputations and advised that the Administration would analyze the views. The Administration expected to report to the Panel the outcome of the public consultation and to brief members on the proposal for the way forward in February 2002. The Administration's preliminary response to the public views was as follows:

- (a) On the criminal provisions related to end-users, it was necessary to exempt the acts of copying copyright works for educational purposes from criminal liability.
- (b) The issue of parallel importation had been under heated debate before the enactment of the Copyright Ordinance in 1997. To encourage the free flow of goods had always been the stance of the Administration. However, given the strong views from the film and record industry, the Government would carefully balance the interests of all parties before making a decision. Therefore, it did not have a specific stance on the matter for the time being.
- (c) As regards other questions, the Administration was unable to provide an immediate response for they were still under examination.

45. Referring to the comment made by a deputation at the meeting that a consumer who possessed an infringing copyright work unknowingly might be convicted, DSCI advised that safeguards had already been provided for under the existing legislation. If the person concerned could prove that he did not know and had no reason to believe that the work was an infringing copy, it would constitute a defence.

46. The Chairman urged the Administration to consider carefully the views presented by the deputations and members on the Consultation Document. He also requested the Administration to report to the Panel the outcome of the public consultation and brief members on the relevant legislation proposals.

III Any other business

47. There being no other business, the meeting ended at 6:30 pm.