

立法會
Legislative Council

LC Paper No. CB(1) 1371/01-02
(These minutes have been seen by the
Administration)

Ref : CB1/PL/CI/1

Panel on Commerce and Industry

Minutes of meeting
held on Monday, 4 February 2002, at 4:30 pm
in Conference Room A 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 CHEUNG Man-kwong
Hon CHAN Kam-lam
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon SIN Chung-kai
Hon CHOY So-yuk
Hon Henry WU King-cheong, BBS
Hon MA Fung-kwok

Non-Panel Members attending : Hon Cyd HO Sau-lan
Hon LAW Chi-kwong, JP
Hon Abraham SHEK Lai-him, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Audrey EU Yuet-mee, SC, JP

Member absent : Hon Mrs Selina CHOW LIANG Shuk-ye, JP

Public officers attending : For Items IV & V

Mr Kenneth MAK
Deputy Secretary for Commerce and Industry

Mr Philip CHAN
Principal Assistant Secretary for Commerce and Industry

For Item IV

Mr CHAU Tak-hay
Secretary for Commerce and Industry

Mr Stephen SELBY
Director of Intellectual Property

Mr Peter CHEUNG
Deputy Director of Intellectual Property

Ms Pancy FUNG
Assistant Director of Intellectual Property

Mr Eddie CHEUNG
Principal Assistant Secretary for Information Technology
and Broadcasting

Mr Danny LAU
Assistant Director of Telecommunications

For Item V

Mr Alex MA
Assistant Director, Information Technology Services
Department

Mr K W LEUNG
Senior Staff Officer, Customs and Excise Department

Ms Josephine TSE
Senior Statistician, Census and Statistics Department

Miss Winnie TO
Principal Trade Officer, Trade and Industry
Department

For Item VI

Mr Raymond YOUNG
Deputy Secretary for Commerce and Industry

Miss Viola CHAN
Principal Executive Officer, Commerce and
Industry Bureau

Mrs Alice CHEUNG
Principal Assistant Secretary (Civil Service)(3)

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

Staff in attendance : Mr TSANG Siu-cheung
Senior Assistant Secretary (1)7

Action

I Confirmation of minutes of previous meeting
(LC Paper No. CB(1) 970/01-02)

The minutes of the meeting held on 10 December 2001 were confirmed.

II Information papers issued since last meeting

2. Members noted that the following information papers had been issued since the last meeting:

- (a) Information paper on the Mainland/Hong Kong Special Administrative Region Joint Commission on Commerce and Trade (LC Paper No. CB(1) 874/01-02); and
- (b) Information paper on the update on the operation of the Applied Research Fund (LC Paper No. CB(1) 939/01-02).

III Date of the next meeting and items for discussion

(LC Paper No. CB(1) 953/01-02(01) - List of outstanding items for discussion
LC Paper No. CB(1) 953/01-02(02) - List of follow-up actions)

3. Members agreed that the next regular meeting would be held at on 11 March 2002 at 4:30 pm to discuss the item on “Review of Innovation and Technology Fund” proposed by the Administration. As an information paper had been provided on the “Update on the operation of the Applied Research Fund”, members agreed to invite the Administration to brief them on this subject at the next meeting.

4. Regarding the item on “Hong Kong Jockey Club Institute of Chinese Medicine Limited”, members accepted the Administration’s suggestion to defer the item to a later Panel meeting.

IV Review of certain provisions of the Copyright Ordinance (LC Paper No. CB(1) 953/01-02(03))

5. The Secretary for Commerce and Industry (SCI) briefed members on the outcome of the “Review of Certain Provisions of Copyright Ordinance” and the specific proposals of the Administration. Details were set out in the information paper provided by the Administration (LC Paper No. CB(1) 953/01-02(03)).

Proposals of the Administration

6. SCI advised that the Administration issued a consultation document in November 2001 for a two-month consultation period ending on 31 December 2001. During the period, a total of 254 submissions were received from nearly all major interested parties and some members of the public. The Administration also consulted the Panel on Commerce and Industry of the Legislative Council (LegCo), as well as held formal and informal discussions with some interested parties. Having regard to the results of the consultation, the Administration had formulated its preliminary proposals, which were summarized in the following eight points:

- (a) to make permanent the arrangement in the Copyright (Suspension of Amendments) Ordinance 2001 so that end-user criminal liability involving piracy in business would exist only for computer programmes, movies, television dramas and musical recordings. This arrangement was widely accepted by the community and no implementation problem had arisen so far. The Administration believed that it had struck the right balance between the protection of intellectual property rights and the practical needs of teaching and for information dissemination;
- (b) to stipulate that employees who possessed pirated copies of the above-mentioned four categories of copyright works supplied by their employers would not be liable to criminal sanction unless the employees dealt in these pirated copies;
- (c) to draw up non-statutory guidelines to clarify the meaning of “reasonable extent” in the Copyright Ordinance (Cap. 528) under which civil liability was exempted for educational purposes to facilitate the education sector in making copies of copyright works for such purposes. The Director of Intellectual Property would convene working groups involving the publishing and education sectors for the development of relevant guidelines. It should be stressed that although end-user criminal liability was not applicable to certain acts of making

unauthorized copies in the course of education, civil liability had already existed and hence, clarification was necessary;

- (d) to introduce a statutory exemption for the making of specialized formats of printed works by non-profit-making bodies for the use of visually impaired persons;
- (e) to consider exempting hotels from paying copyright royalties to owners of underlying musical works when playing free radio or television broadcasts in their guest rooms; and public transport operators from paying royalties for similar broadcasts on the condition that these broadcasts were mainly played for the driver to have access to public information;
- (f) to maintain the criminal sanction and civil remedy against parallel importation of copyright works other than computer software, but to remove the criminal and civil liability for importation and possession of such works by end-users;
- (g) to refrain from introducing compulsory registration of licensing bodies for the time being but to actively encourage all major licensing bodies to register under the existing voluntary scheme, as well as to develop their own voluntary codes of practice, and to expand the membership of the Copyright Tribunal; and
- (h) to entrust the Information Technology and Broadcasting Bureau (ITBB) with the responsibility to address the issue of pirated viewing of subscription television.

7. SCI pointed out that as it would take time to prepare the necessary legislative amendments to take forward the above proposals, and in view of the expiry of the Copyright (Suspension of Amendments) Ordinance 2001 on 31 July, the Administration would concentrate first on issues related to end-user criminal liability with a view to introducing a bill to LegCo before July. If examination of this bill could not be completed before the suspension expired, the Administration would propose to extend the suspension for six months, until end January 2003. Regarding amendments to legislation in relation to other issues, the Administration intended to bring them forward in the 2002-03 legislative session. ITBB would separately deal with legislative amendments for issues related to fraudulent reception of subscription television programmes.

Unauthorized reception of subscription television programmes

8. On fraudulent reception of subscription television programmes, the Director of Intellectual Property (DIT) advised that the Administration considered such acts improper and proposed to tighten regulation in this respect. In drawing up the

relevant proposal, the Administration had considered many factors, including the implications of pirated viewing on the development of the local subscription television market, the effectiveness of digitization in addressing the problem, the operators' responsibilities to protect their own rights, and the disturbance of the relevant measures caused to the public. He pointed out that the provision and sale of unauthorized decoders for the reception of subscription television programmes were already governed by the Broadcasting Ordinance (Cap. 562) and Copyright Ordinance. Under the Broadcasting Ordinance, it was a criminal offence for a person to import, export, manufacture, sell, offer for sale, or let for hire an unauthorized decoder in the course of trade or business. Moreover, under the Copyright Ordinance, a service provider had the same rights and remedies against a person who made, imported, exported, sold or let for hire a decoder for receiving its subscription television programmes without authorization, as a copyright owner had in respect of an infringement of copyright. In view of the current situation and the submissions received during the consultation period, the Administration proposed a gradual approach in adopting the following measures to combat fraudulent reception of subscription television programmes:

- (a) to introduce criminal sanction and civil remedy against the possession of unauthorized decoders for commercial purposes;
- (b) to introduce civil remedy against fraudulent reception of subscription television programmes; and
- (c) to encourage service operators to digitize their services as soon as possible. If it proved that fraudulent reception of subscription television programmes was still prevalent after digitization, the Government would take prompt action to introduce criminal sanction against end-users.

9. Mr CHAN Kam-lam expressed concern about the possession of unauthorized decoders for commercial purposes and enquired whether any measures were in place to prohibit the importation of such decoders. In response, the Principal Assistant Secretary for Information Technology and Broadcasting (PAS(ITB)) advised that the smuggling of unauthorized decoders for commercial purposes was a criminal offence under the Broadcasting Ordinance. The Customs and Excise Department would take enforcement actions accordingly to prevent such decoders from being brought into Hong Kong. Based on the information available, there had not been any cases of large scale importation of unauthorized decoders so far.

10. Mr CHAN Kam-lam considered the above measures ineffective in tackling pirated viewing of subscription television programmes. It was rather difficult for an enforcement officer to judge whether a decoder was brought into Hong Kong for commercial purposes, which gave rise to grey areas in enforcing the law. While appreciating Mr CHAN's concern, PAS(ITB) believed that the digitization of

subscription television services would bring the fraudulent reception of subscription television programmes with unauthorized decoders under control.

11. Given that members of the public were solicited openly through handbills for the installation of unauthorized decoders to facilitate pirated viewing of subscription television programmes, Mr SIN Chung-kai expressed his concern and enquired whether any regulatory measures were in place. PAS(ITB) advised that the issue raised by Mr SIN was already governed by the Broadcasting Ordinance. Upon reports from the public, enforcement officers would deal with them in accordance with the law.

12. Mr SIN Chung-kai pointed out that the pirated use of telex system was a criminal offence under the Theft Ordinance (Cap. 210). Mr SIN opined that the Administration should consider invoking the Ordinance to combat pirated viewing of subscription television programmes. The Assistant Director of Telecommunications advised that in view of the different definitions of subscription television and telex system, the control measures concerned could not be adopted directly. PAS(ITB) emphasized that a gradual approach was more desirable in encouraging operators to digitize their services so as to tackle the problem of pirated viewing of subscription television programmes. If digitization could not provide a solution, criminal sanction would be introduced promptly.

13. Responding to Mr MA Fung-kwok's enquiry, PAS(ITB) said that the combat against pirated viewing of subscription television programmes was not a pretext to force the subscription television operators to digitize their services. In fact, individual operators had already initiated their own digitization plans. According to overseas experience, digitization had made pirated viewing very difficult.

14. Referring to Mr MA Fung-kwok's comments on paragraph 28 of the paper, the Deputy Secretary for Commerce and Industry (DSCI) clarified that based on the views received during the consultation period, the public generally supported the introduction of criminal sanction against those receiving subscription television programmes fraudulently for commercial purposes (e.g. for public display at pubs). As to whether pirated viewing of subscription television programmes for personal or domestic purposes should also be made a criminal offence, the public had divergent views and called for thorough examination of the issue. PAS(ITB) supplemented that among the submissions received from the public, except for some individuals, many organizations such as political parties, professional bodies and trade associations considered that the proposal to introduce criminal sanction against end-users for pirated viewing of subscription television programmes should be dealt with carefully.

15. Mr Abraham SHEK opined that fraudulent reception of subscription television programmes, whether for commercial or personal/domestic purposes, should all be regarded as infringing acts. He further remarked that the operators concerned should have their revenue protected as they were required to pay licence fees. DSCI

reiterated that in determining whether criminal sanction should be imposed to combat pirated viewing, the Administration had considered a number of factors, which included the severity of the infringing acts; whether it was too harsh to hold the end-users criminally liable, the enforcement arrangements upon the introduction of criminal sanction and the feasibility of tackling pirated viewing by digitization. According to overseas experience, those jurisdictions which had imposed criminal sanction on end-users for pirated viewing of subscription television programmes encountered enforcement difficulties and failed to stop pirated viewing. In view of the reservation expressed by the public on imposing criminal liability on end-users, the Administration considered it more appropriate to tackle the problem by digitization first.

16. On pirated viewing of subscription television programmes, Ms Audrey EU opined that prudence should be exercised when determining whether such acts should be criminalized. She supported a gradual approach whereby the problem would be tackled by digitization first. Criminalization of such acts should only be explored when this approach was proved to be ineffective.

17. Responding to Mr MA Fung-kwok's enquiry on whether the Commerce and Industry Bureau or the ITBB should be responsible for the legislative amendments relating to fraudulent reception of subscription television programmes, DIP pointed out that fraudulent reception of subscription television programmes was not an infringing act under the Copyright Ordinance. The Hong Kong Bar Association also considered such acts were outside the scope of copyright and should not be governed by the Copyright Ordinance.

Free public showing or playing of broadcasts or cable programmes

18. On the above issue, Mr LAW Chi-kwong suggested that social welfare organizations should be exempted from paying copyright royalties to the owners of underlying works of the programmes concerned. DSCI responded that exemption had already been provided for under section 76 of the Copyright Ordinance in this regard. As for permitted acts for educational purposes, Mr LAW Chi-kwong was concerned that many social welfare organizations had to photocopy copyright works for reference or as teaching materials during informal educational activities (e.g. group activities). He therefore hoped that the Administration would consider granting copyright exemption for these informal educational activities as appropriate.

CIB DSCI undertook to consider the suggestion.

19. In response to Ms Audrey EU's suggestion that an across-the-board exemption from royalties payment should be granted for playing copyright works through broadcasts or cable programmes shown in public places, SCI advised that the Administration had received and considered carefully the views of the parties concerned on this issue. However, Hong Kong must comply with its obligations under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) of the World Trade Organization (WTO). Moreover, a similar

exemption in the US legislation had been ruled by the WTO to be violating the TRIPS Agreement. As such, after making reference to overseas practices and the TRIPS Agreement, the Administration only proposed to exempt the places set out in paragraph 20.

20. The Chairman said that according to WTO's ruling, provisions concerning "homestyle exemption" under the US Copyright Act of 1976 did not violate the TRIPS Agreement. He further pointed out that this exemption allowed restaurants or bars with a floor area below 2 000 sq ft to play musical works from radio or television programmes in their venues. Such acts would not be regarded as infringing acts. He suggested that the Administration should make reference to the US practice by allowing some small scale public venues to play musical works under similar circumstances without requiring them to pay the copyright owners any royalties. Apart from floor area, Mr Tommy CHEUNG also suggested that appropriate exemptions should be granted having regard to the equipment through which the copyright works were played. DSCI clarified that the scope of "homestyle exemption" was very narrow. For musical works, the exemption only applied to dramatic musical works, such as operas, while other musical works could not be exempted. Given the limited scope of its application, the exemption could not solve the problem concerned.

21. The Chairman and Mr LAW Chi-kwong expressed concern about WTO's ruling and requested the Administration to provide the relevant information for members' reference. Mr Tommy CHEUNG further called on the Administration to re-examine extending the scope of the exemption. SCI undertook to provide information on WTO's ruling (which was only available in English) after the meeting.

(Post-meeting note: Information on WTO's ruling on the US copyright exemptions was issued to members for reference vide LC Paper No. CB(1) 1049/01-02 on 7 February 2002.)

Criminal provisions related to end-user piracy in business

22. Mr HUI Cheung-ching enquired whether an employee who knowingly used pirated computer software supplied by his employer in his work would be criminally liable under the Administration's proposal. In response, SCI advised that the employee might be liable to criminal sanction under the current legislation. However, there were concerns that criminal sanction was too harsh for employees, who were in a weak position to bargain with employers for fear of losing their jobs. As such, the Administration proposed that employees should not be criminally liable under the above circumstances.

Parallel importation of copyright works other than computer software

23. Referring to the proposal of removing the criminal and civil liability for importation and possession of parallel-imported goods by end-users as stated in

paragraph 24 of the paper, Mr MA Fung-kwok expressed concern about the possible adverse impact on certain local industries. DSCI responded that in view of the growing popularity of online shopping, the Administration considered that there was no justification to maintain the criminal and civil liability for importation and possession of parallel-imported goods by end-users.

24. Mr MA Fung-kwok remarked that upon the liberalization of parallel importation, the use of parallel imported goods in some premises might change the nature of the authorization of the goods concerned. For example, optical discs which were for domestic use overseas could be used in local karaoke establishments for commercial purposes. In this respect, DSCI said that the same situation might occur to non-parallel imported goods as well. The issue involved compliance with contractual terms and should be dealt with under contract law instead of imposing criminal sanction on end-users. He further pointed out that to a certain extent, the growing trend of electronic shopping had already altered the “window system” for the sequential release of certain goods. Besides, individuals only made small purchases when shopping online. Therefore, it was necessary to introduce consequential legislative amendments as the situation so required.

V Upgrading and enhancement of Government’s back-end computer system for electronic data interchange services
(LC Paper No. CB(1) 953/01-02(04))

25. DSCI briefed members on the proposal to enhance and upgrade Government’s back-end computer system for electronic data interchange (EDI) services with a view to coping with additional service providers. Details were set out in the information paper provided by the Administration (LC Paper No. CB(1) 953/01-02(04)).

26. On Mr MA Fung-kwok’s enquiry about the \$0.4 million to meet the provision for half of a systems manager post as stated in paragraph 17 of the paper, the Assistant Director, Information Technology Services Department explained that the expenditure was mainly for upgrading the post of an existing analyst/programmer to the rank of systems manager to deal with more complex work. The proposal did not involve any additional staffing requirements.

27. The Chairman asked whether the implementation of the present proposal would result in a reduction in the existing staffing level. DSCI responded that the proposal, which aimed at enhancing and upgrading the functions of the back-end computer system, would not involve any deletion of posts.

28. Mr SIN Chung-kai supported the proposal in principle and asked whether the proposal could tie in with the proposed liberalization of the EDI service market and introduction of additional service providers after the exclusive franchise of Tradelink Electronic Commerce Limited (Tradelink) expired in 2003. DSCI replied in the affirmative.

29. Mrs Sophie LEUNG supported the proposal and hoped that with an upgraded back-end computer system and improved service quality, local businesses would become more competitive.

30. In response to the Chairman's enquiry, DSCI said that the proposed upgrading of the back-end computer system would only facilitate the provision of Cargo Manifest, Import and Export Declaration, and Dutiable Commodities Permit services. As Restrained Textiles Export Licence, Production Notification, and Certificate of Origin services might be affected by the abolition of quota restrictions on Hong Kong in 2005 under the WTO Agreement on Textiles and Clothing, the future requirements for these three types of documents were currently under review. Therefore, it was uncertain at the moment whether the back-end computer system had to be upgraded for these three types of services. Pending the outcome of the review and confirmation of new service providers' interest in offering these services, the Government would not consider enhancing the back-end computer system for such services at this stage.

31. The Chairman concluded that the Panel supported in principle the proposal to enhance and upgrade the Government's back-end computer system for EDI services. Members noted that the proposal would be submitted to the Finance Committee for approval on 8 March 2002.

VI Special Posting Allowance for officers posted outside Hong Kong (LC Paper No. CB(1) 953/01-02(05))

32. DSCI briefed members on the proposed new mechanism for setting Special Posting Allowance (SPA) payable to officers posted outside Hong Kong, which would apply to the Hong Kong Economic and Trade Office (ETO) in Guangdong. He also consulted members on the proposed rates of Rent Allowance (RA) payable to officers to be posted to the ETO in Guangdong. Details were set out in the information paper provided by the Administration (LC Paper No. CB(1) 953/01-02(05)).

33. Noting from Annex B of the information paper that the SPA rates for officers posted outside Hong Kong varied greatly according to their respective ranks even if they were posted to the same city, Mr CHEUNG Man-kwong would like to know the rationale for such differences. In addition, he was concerned that as compared with the existing mechanism, the reduction in allowance rates for officers with children was greater than that for single officers under the proposed new system. In response, DSCI said that it was impossible to trace the calculation basis of the allowances as the existing mechanism for determining SPA was largely evolved from the previous UK diplomatic system. He further explained that officers at lower ranks had a greater reduction in allowance rates under the new system probably because the existing system had guaranteed these officers an SPA rate no less than 60% of the rate of allowance payable to an Administrative Officer Staff Grade C. However, he stressed that the allowance rates under the new mechanism were

determined after taking into account the real cost of living index of various posting cities and were therefore more objective. Regarding the reason for a greater reduction of allowance payable to officers accompanied by children than that of single officers, DSCI said that he would examine the issue.

CIB

34. In response to Mr CHEUNG Man-kwong's enquiry, DSCI said that at present, individual officers were posted outside Hong Kong on a tour basis. The new allowance mechanism would apply to officers who took up postings outside Hong Kong after the implementation of the new system. Serving officers on their current tour (and serving officers whose tour would be extended for one year or less) would not be affected.

35. Mrs Sophie LEUNG was of the view that to ensure fairness, allowance ceilings should be set for all ranks of officers posted outside Hong Kong. She also suggested that the Civil Service Bureau (CSB) should conduct a comprehensive review of various allowances available to civil servants. DSCI clarified that the proposed new mechanism would break down the allowance into two components: an incentive element and a cost of living element. The former would be set according to the family status of the officers posted outside Hong Kong (paragraph 5 (a) of the paper), while the latter would depend on the cost of living in the posting city (paragraph 5 (b) of the paper). Regarding concern over a comprehensive review on the allowance system for civil servants, the Principal Assistant Secretary (Civil Service) advised that CSB would review the allowances from time to time. The review of the SPA system was an example.

36. Mr CHEUNG Man-kwong enquired about the percentages of spendable income used in the formula for the calculation of the cost of living allowance as set out in paragraph 4 of Annex A of the paper. DSCI advised that the percentages were calculated from the findings of a questionnaire survey conducted in the posting cities by a consultant firm. He added that in 2002, the percentages concerned were:

Single officers	19.41%
Married officers	22.68%
Officers with children	25.51%

The above percentages were applicable to all officers irrespective of their posting cities and ranks. He advised that the cost of living in the city where an officer was posted had to be higher than that of Hong Kong. Otherwise the officer concerned would not be entitled to receive allowance on cost of living .

37. The Chairman concluded that the Panel supported in principle the Administration's proposal on the SPA system for officers posted outside Hong Kong. Members also considered that the allowance system should be reviewed regularly to ensure that it met present-day needs. Members noted that the proposal would be submitted to the Finance Committee for approval on 8 March 2002.

VII Any other business

38. There being no other business, the meeting ended at 6:50 pm.

Legislative Council Secretariat

25 March 2002