

## **Legislative Council Panel on Commerce and Industry**

### **Copyright (Prescription of Copyright Registers) Regulation**

#### **Purpose**

This paper seeks Members' views on the draft Copyright (Prescription of Copyright Registers) Regulation (the Regulation) at the Annex.

#### **Background**

2. Proof of copyright subsistence and ownership is a key element in legal proceedings against infringement of copyright under the Copyright Ordinance (the Ordinance). Section 121 of the Ordinance provides that copyright owners may give such proof by filing an affidavit. Under section 121(1), the affidavit needs to contain, among others, the date and place that the copyright work concerned was made or first published, and be accompanied by a true copy of the work.

3. Section 121(2) provides an alternative mode of filing an affidavit. An affidavit is admissible if it states, among others, that the relevant work has been registered with a Copyright Register prescribed under section 121(16)<sup>1</sup> of the Ordinance, and is accompanied by a copy of the certificate of registration of the relevant work issued by the authority in charge of the Copyright Register, which has been properly certified to be a true copy.

4. Section 121(16) provides that the Secretary for Commerce, Industry and Technology may by regulation prescribe Copyright Registers for the purpose of section 121(2). No register has been prescribed so far.

5. Some copyright owners consider the requirement for a true copy of the copyright work to be provided with the affidavit under section 121(1) (paragraph 2 above) too onerous, as there are circumstances where a large number of copyright works are involved and one copy each of the works must be provided. In addition, it is not uncommon that proceedings for different piracy cases involving the same work (e.g. movies) take place concurrently

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<sup>1</sup> There is a typographical error in section 121(2)(a)(i) of the Copyright Ordinance. The reference to "subsection (14)" therein should be "subsection (16)". The Department of Justice has agreed to rectify the error by an order to be made by the Secretary of Justice under section 98A of the Interpretation and General Clauses Ordinance (Cap.1).

and it is costly to produce multiple true copies for the purpose of those proceedings.

6. As such, some copyright owners suggest that the Government should prescribe relevant copyright registers in other countries to enable proof of copyright ownership under section 121(2). In recognition of the above concerns, we intend to, for the purpose of section 121(2), prescribe certain Copyright Registers under section 121(16) to facilitate copyright owners in legal proceedings.

### **Selection of Copyright Registers**

7. To ensure transparency, fairness and compliance with the most-favoured-nation provision in the World Trade Organisation Agreement on Trade-Related Aspects of Intellectual Property Rights, we believe that we should only prescribe registers established by statutes. This is because as compared with a Register set up administratively or by a non-government body, a statute-based Register is generally more authoritative and transparent.

8. We have been collecting and reviewing information on the Copyright Registers of a number of countries against the criterion in paragraph 7 above, with a view to determining whether they should be prescribed for the purpose of section 121(2). For the time being, we have identified the copyright registers maintained by the United States, Canada and India as meeting the criterion. We are prepared to prescribe other Copyright Registers meeting the criterion as they come to our notice. On the other hand, in the future if the nature of a prescribed Copyright Register has changed such that it no longer meets the criterion, we will remove it from the list of prescribed Registers.

### **The proposed Regulation**

9. The proposed Regulation for the prescription of copyright registers is at the Annex. It includes

Clause 1 - provides the commencement date of the Regulation;

Clause 2 - provides that the registers specified in the Schedule are, for the purpose of section 121(2) of the Ordinance, the prescribed Copyright Registers; and

The Schedule - sets out a list of copyright registers maintained by countries, territories and areas identified in accordance with the criterion in paragraph 7 above, viz US, Canada and India.

### **Way Forward**

10. Subject to Members' views, we intend to introduce the proposed Regulation into the Legislative Council within this legislative session.

Commerce and Industry Branch  
Commerce, Industry and Technology Bureau  
May 2003

**COPYRIGHT (PRESCRIPTION OF COPYRIGHT  
REGISTERS) REGULATION**

(Made under section 121(16) of the Copyright Ordinance (Cap. 528))

**2. Commencement**

This Regulation shall come into operation on ( Date ).

**3. Prescribed Copyright Registers**

The Copyright Registers prescribed for the purposes of section 121(2) of the Ordinance are specified in the Schedule.

SCHEDULE

[s. 2]

PRESCRIBED COPYRIGHT REGISTERS

1. The register maintained by the United States Copyright Office relating to copyright claims registered under Chapter 4 of Title 17 of the United States Code.
2. The Register of Copyrights maintained by the Copyright Office under the Copyright Act of Canada.
3. The Register of Copyrights maintained by the Copyright Office under the Copyright Act of India.

Secretary for Commerce, Industry  
and Technology

### **Explanatory Note**

This Regulation prescribes certain Copyright Registers so that the owner of a copyright work can make use of the alternative mode of filing an affidavit under section 121(2) of the Copyright Ordinance (Cap. 528).