

**立法會**  
**Legislative Council**

LC Paper No. CB(1)863/04-05  
(These minutes have been  
seen by the Administration)

Ref: CB1/PL/CI/1

**Panel on Commerce and Industry**

**Minutes of meeting**  
**held on Tuesday, 18 January 2005, at 2:30 pm**  
**in Conference Room A of the Legislative Council Building**

**Members present** : Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP (Chairman)  
Hon WONG Ting-kwong, BBS (Deputy Chairman)  
Hon CHAN Kam-lam, JP  
Hon SIN Chung-kai, JP  
Hon Vincent FANG Kang, JP  
Hon Jeffrey LAM Kin-fung, SBS, JP  
Hon Ronny TONG Ka-wah, SC  
Hon CHIM Pui-chung

**Member attending** : Hon Albert CHAN Wai-yip

**Members absent** : Dr Hon LUI Ming-wah, JP  
Hon Andrew LEUNG Kwan-yuen, SBS, JP

**Public officers attending** : Agenda Item IV

Mr John C TSANG, JP  
Secretary for Commerce, Industry and Technology

Miss Denise YUE, JP  
Permanent Secretary for Commerce, Industry and  
Technology (Commerce and Industry)

Mr Anthony WONG, JP  
Commissioner for Innovation and Technology

Agenda Item V

Mr Anthony WONG, JP  
Commissioner for Innovation and Technology

Mr Brian LO  
Assistant Commissioner for Innovation and Technology  
(Funding Schemes)

Mr David WONG  
Assistant Commissioner for Innovation and Technology  
(Infrastructure)

Mr YEUNG Tak-keung  
Assistant Commissioner for Innovation and Technology  
(Policy and Development)

Agenda Item VI

Miss Mary CHOW  
Deputy Secretary for Commerce, Industry and Technology  
(Commerce and Industry)

Ms Priscilla TO  
Principal Assistant Secretary for Commerce, Industry and  
Technology (Commerce and Industry)

Mr Peter CHEUNG, JP  
Deputy Director of Intellectual Property

Mr Frederick WONG  
Senior Solicitor (Copyright)  
Intellectual Property Department

Mr Y K TAM  
Senior Superintendent  
Intellectual Property Investigation Bureau  
Customs and Excise Department

**Clerk in attendance :** Miss Polly YEUNG  
Chief Council Secretary (1)3

**Staff in attendance :** Ms Pauline NG  
Assistant Secretary General 1

Miss Anita HO  
Assistant Legal Adviser 2

Ms Debbie YAU  
Senior Council Secretary (1)1

Ms Sharon CHAN  
Legislative Assistant (1)6

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Action

**I Confirmation of minutes and matters arising**

LC Paper No. CB(1)695/04-05 -- Minutes of meeting held on  
14 December 2004

The minutes of the meeting held on 14 December 2004 were confirmed.

**II Paper issued since last meeting**

LC Paper No. CB(1)598/04-05(01) -- Information on the financial  
position of the Applied Research  
Fund for the period of 1  
September 2004 to 30 November  
2004

2. Members noted that the above paper had been issued for members' information since the last meeting.

**III Date and items for discussion for next meeting**

LC Paper No. CB(1)690/04-05(01) -- List of outstanding items for  
discussion

LC Paper No. CB(1)690/04-05(02) -- List of follow-up actions

3. Members agreed to discuss the following items at the next Panel meeting to be held on 15 February 2005:

- (a) Preliminary report on the impact of the Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA); and
- (b) Unauthorized downloading of copyright works from the Internet.

**IV Briefing by Secretary for Commerce, Industry and Technology on relevant policy initiatives in the Chief Executive's Policy Address 2005**

LC Paper No. CB(1)690/04-05(03) -- Policy Agenda of Commerce and Industry Branch and Innovation and Technology Commission, Commerce Industry and Technology Bureau

LC Paper No. CB(1)747/04-05(01) -- Speaking note of the Secretary for Commerce, Industry and Technology  
(*tabled and subsequently issued to members on 19 January 2005*)

Two booklets provided by the Administration

- (a) Address by the Chief Executive at the Legislative Council meeting on 12 January 2005 -- "Working Together for Economic Development and Social Harmony "; and
- (b) The 2005 Policy Address -- "Policy Agenda".

Introduction by the Administration

4. At the invitation of the Chairman, the Secretary for Commerce, Industry and Technology (SCIT) introduced the initiatives concerning the Commerce and Industry Branch (CIB) and the Innovation and Technology Commission (ITC) of the Commerce, Industry and Technology Bureau (CITB) in the Chief Executive's Policy Address 2005. In gist, CIB would step up promotional efforts to attract Mainland enterprises to invest in Hong Kong, while ITC would take forward the new strategic framework for innovative and technology development, and implement the DesignSmart initiative to promote the wider use of design and innovation in industries to help them move up the value chain. SCIT also gave an account of the latest position regarding the initiatives contained in the 2004 Policy Agenda.

5. Mr SIN Chung-kai referred to his written questions on the 2005 Policy Address issued and tabled at the meeting vide LC Paper No CB(1)737/04-05 and requested the Administration to provide a written reply.

(*post-meeting note:* The Administration's reply to Mr SIN's questions on Policy Address 2005 was issued to members on 24 January 2005 vide LC Paper No CB(1)777/04-05(01))

Developing cultural and creative industries

6. Noting from the Policy Address that the Administration had identified as one of its important tasks the stepping up of the promotion of cultural and

creative industries, Mr SIN Chung-kai pointed out that this policy initiative would straddle the purviews of the Home Affairs Bureau (HAB), CITB and other bureaux/departments. To facilitate monitoring and foster links with relevant stakeholders, he considered that the Administration should delineate the division of responsibilities among the bureaux and set out the information clearly in writing. He also enquired about the bureau which would play a leading role to provide the policy steer in promoting the development of cultural and creative industries. The Chairman shared Mr SIN's concern about a clear division of work.

7. In response, SCIT advised that HAB and CITB would work closely under the leadership of the Chief Executive to promote development in the cultural and creative industries. He said that at present, HAB and CITB had their respective policy responsibilities which were clearly defined. While certain categories of cultural and creative industries were under the purview of HAB, CITB would continue to promote the development of creative industries in the areas of film, digital entertainment, computer software, design etc. He believed that after the establishment of the relevant consultative framework, the division of responsibilities among the bureaux/departments concerned would be further refined and would be made known to the industries and the public at large.

#### Setting up production base in Hong Kong

8. Mr Jeffrey LAM pointed out that following the implementation of CEPA since 1 January 2004, some Hong Kong enterprises with production lines in the Mainland, as well as some Mainland enterprises, had expressed interest in using Hong Kong as their production base. However, as the relevant application procedures for setting up factories in Hong Kong required the vetting or approval of quite a number of Government departments, Mr LAM urged the Administration to streamline the application procedures to facilitate business operations which would in turn help boost local employment.

9. In response, the Permanent Secretary for Commerce, Industry and Technology (Commerce and Industry) (PSCI) advised that as announced in the 2004 Policy Address, the Government had set up the Economic and Employment Council (EEC) under the chairmanship of the Financial Secretary to spearhead efforts to further improve the environment for doing business in Hong Kong. These efforts would build on the business facilitation work already undertaken by the Government before the establishment of the EEC. She further advised that as a result of the Administration's streamlining efforts in the past years, the application procedures for registration of factories for the manufacture of products such as electronics, toys and clothing had been largely simplified. Factory registration was a pre-requisite if a manufacturer wished to apply for Hong Kong Certificates of Origin for the manufactured products. She noted that factories engaged in the manufacture of food products might need to meet other health-related licensing requirements which were outside the purview of CITB. In this connection, PSCI informed members that the Subgroup on Business Facilitation under the EEC had set up two task forces to review the

existing regulatory activities and requirements in the construction and retail sectors aimed to eliminate outdated or excessive regulation and cut red tapes to provide a business-friendly environment. PSCI welcomed further information from Mr LAM on the types of products covered by those factory registration applications that had encountered delay in processing so that the Administration could follow up as appropriate. Mr LAM said that he would provide further details to CIB after the meeting. He considered it important that the Administration should handle applications for factory registration related to the production of seasonal or time-critical food products, such as mooncakes, in a timely manner.

#### Small and Medium Enterprises Funding Schemes

10. The Deputy Chairman enquired about the timing and scope of the review on the Small and Medium Enterprises (SME) Funding Schemes and whether the Funds were operating well. In reply, PSCI recapped that the Government had set up four SME Funding Schemes in December 2001/January 2002 to help SMEs tide over difficult times during the economic downturn and increase their competitiveness. Since inception, two reviews on the operation of the Funds had been conducted by the SME Committee. The Committee had found that the Funds were serving their intended purposes well and had made a number of recommendations which had all been implemented by the Administration with the approval of the Finance Committee as appropriate. Having regard to the changing needs of SMEs, she noted that the SME Committee would undertake another review to ascertain whether the four Funding Schemes should continue in their present form and whether further funding injection by the Government would be needed. The Administration intended to brief the Panel in March/April 2005 after completion of the review.

#### The Cyberport project

11. Noting from paragraph 24 of the 2005 Policy Address that the Administration was resolutely against "collusion between business and the Government" and would strictly enforce the monitoring systems to eliminate any "transfer of benefits", Mr Albert CHAN enquired about the measures, if any, to be implemented by CITB in upholding these principles. Referring to the profit-sharing arrangement between the Government and the Cyberport Developer for the Cyberport project, Mr CHAN said that he had written to the Administration recently. He noted from the Administration's reply that the sales prices of some units in the Residential Portion of the Cyberport had dropped 18% from May (about \$9,200 per square foot) to June (about \$7,400 to \$8,000 per square foot) in 2004. He had checked from the transaction records at the Land Registry that five units had been sold at the lower price in June 2004. However, Mr CHAN doubted very much whether the property market had undergone such a downward adjustment in the one-month period between May to June last year, and was very concerned that the Government's share of sales proceeds had diminished substantially as a result.

12. In response, SCIT remarked that there was no question of "collusion between business and the Government" and "transfer of benefits" because all along, CITB had acted in strict accordance with relevant rules and procedures in formulating its policy initiatives. Regarding Mr Albert CHAN's concern about the Government's role in the sale of residential units in Cyberport, SCIT said that he would be pleased to discuss the matter with members at the Panel on Information Technology and Broadcasting (ITB) meeting to be held at 4:40 pm on the same day as the subject matter was under the purview of the ITB Panel.

## **V Review of the Innovation and Technology Fund and Applied Research Fund**

LC Paper No. CB(1)690/04-05(04) -- Information paper provided by the Administration

LC Paper No. CB(1)688/04-05 -- Background brief on funding support for innovation and technology development prepared by the Secretariat

LC Paper No. CB(1)747/04-05(02) -- Powerpoint presentation material on "Review of the Innovation and Technology Fund and Applied Research Fund" provided by the Administration  
*(tabled and subsequently issued to members on 19 January 2005)*

LC Paper No. CB(1)747/04-05(03) -- Letter from Hon SIN Chung-kai on "Review of the Innovation and Technology Fund and Applied Research Fund"  
*(tabled and subsequently issued to members on 19 January 2005)*

13. With the aid of power-point presentation, the Commissioner for Innovation and Technology (C for I&T) briefed members on the outcome of the public consultation on the new strategic framework for Innovation and technology development, the implementation plan for the new strategic framework and the new three-tier structure of the Innovation and Technology Fund (ITF), as well as the result of the review of the Applied Research fund (ARF). He also introduced the five key elements of the new strategy, the criteria in selecting the technology focus areas for priority development, the four research and development (R&D) centres planned to be set up, the five-year plan of the Hong Kong Applied Science and Technology Research Institute (ASTRI), the new funding model for ITF, and the mode of operation of R&D centres.

New strategic framework for innovation and technology development

*Technology focus areas*

Admin

14. Mr SIN Chung-kai expressed the support of the Democratic Party for the general principles underpinning the new strategic framework for innovation and technology development. Referring to his letter tabled at the meeting with a submission from the information technology (IT) sector, Mr SIN reflected the dissatisfaction of the IT sector that information and communications technology (ICT) had not been selected as one of the technology focus areas for the setting up of R&D centres or as one of the research priority areas in the new five-year plan of ASTRI. The IT sector urged the Administration to reconsider the strategic position of IT as a core industry for Hong Kong, and re-affirm IT as an essential core area for innovation and technology development. Supporting the views and recommendations in the aforesaid submission, Mr SIN urged the Administration to consider them seriously and to provide a written response to his letter.

*(post-meeting note : The Administration's reply to Mr SIN's letter has been issued to members on 7 February 2005 vide LC Paper No. CB(1)882/04-05(01)).*

15. On the selection of focus areas for priority development, C for I&T stressed that all along, IT had been one of the key areas for strategic development under ITF. In fact, in the past five years, 34% of the funding of ITF had been deployed to support IT projects. As technology advanced, almost all technological applications and researches made use of IT. C for I&T further highlighted the extensive use of IT in various fields ranging from telecommunications, wireless applications, digital broadcasting, multi-media applications to digital entertainment etc. As such, instead of establishing a specific R&D centre for IT *per se* or selecting IT as research priority areas in ASTRI's five-year plan, it would be more cost-effective to incorporate and exploit IT in other focus areas. In fact, most of the focus areas now selected for priority development under the new strategy contained IT-related elements, in particular the areas of communications technologies, consumer electronics, logistics and supply chain management enabling technologies. C for I&T pointed out that these were areas which were backed up by a strong industry base so that the deliverables could be commercialized for the benefit of the industry. The four focus areas for which R&D centres would be set up at this stage could meet the relevant criteria for a market-driven and demand-led approach under the new strategy.

16. Mr SIN Chung-kai did not fully subscribe to the Administration's explanation and reiterated the importance of IT as a core area in the innovation and technology development for Hong Kong. In this connection, the Chairman remarked that the strategic role of IT had evolved over time. Instead of functioning as a standalone activity, the use of IT had permeated into all

commercial and industrial activities as a vital tool to drive the development of existing and new industries.

*Mode of operation of R&D centres*

17. The Deputy Chairman was concerned whether the work of the R&D centres for the four selected focus areas would overlap with that of existing R&D institutions, in particular those which had already developed useful R&D results. For example, he noted that the passenger terminal of the Hong Kong International Airport (HKIA) was in the course of installing a new digital labeling system utilizing radio frequency identification (RFID) technology whilst the R&D centre for logistics and supply chain management (SCM) enabling technologies also planned to develop the RFID technology.

18. In response, C for I&T assured members that setting up R&D centers in selected focus areas would help improve the relevance of applied R&D to the needs of industry and enhance the coordination among different R&D institutions and the industry. He pointed out that there were indeed some overlapping R&D efforts in the past, in particular among the local universities which might have engaged in R&D activities for the same subject and retained the R&D results without further application. As such, the main task of the R&D centers was to work closely with local universities and other R&D institutions to leverage on their resources, including the R&D results. They would also help identify and liaise with other research groups within or outside the R&D centre that could provide input and technological solutions to the industries.

19. Mr Jeffrey LAM declared that he was a member of the Vetting Committee of the Innovation and Technology Fund. He relayed the industry's concern about the slow adoption of R&D results. While noting that details of individual R&D projects and their results were available from ITC's website, Mr LAM asked whether ITC could enhance the promotion of R&D results to the trade associations and other industry organizations.

20. In reply, C for I&T remarked that the ITC would launch a publicity and educational programme in 2005 to promote a culture of innovation and technology among the general public and to introduce those R&D results that had been transferred and applied for industry use. It was expected that through enhanced awareness of innovation and technology, local or Mainland industrialists would be encouraged to apply the R&D results to their products.

*R&D centre for textile and clothing*

21. In reply to Mr Vincent FANG on the development plan of the R&D centre for textile and clothing, C for I&T advised that most organizations and companies in the textile and clothing industry had pledged support for the Hong Kong Polytechnic University (Poly U) to host the R&D centre for textile and clothing. The Administration planned to invite the Poly U to make an application for the hosting of this centre. It was envisaged that the centre, in

close collaboration with other local universities and R&D institutions, could provide technical support to the textile and clothing industry. In fact, the Government had provided R&D support to the textile and clothing sectors through ITF and yielded good R&D results. Some recent examples were the development of nano-materials and related processing technologies, manufacturing of torque-free single cotton yarn, research on moisture management fabrics and the development of shape memory garment. Regarding Mr FANG's enquiry about the development of the fashion design industry, C for I&T clarified that fashion design was one of the areas currently being developed under the DesignSmart initiative. A one-stop shop for design cluster located at Kowloon Tong would soon be developed.

22. In response to Mr Vicent FANG's further enquiry on how the textile and clothing industry could share the R&D results, C for I&T said that the R&D centres were non-profit making entities. The relevant industries might participate in a number of ways. For example, interested companies might form a consortium to work under a particular R&D centre. They could also sponsor/ collaborate with the relevant R&D centre. The R&D centres would work out with the participating industries on the commercialization arrangements, including intellectual property rights and royalties.

23. The Chairman was pleased to note that an R&D center under the focus area of textile and clothing would be set up. However, she pointed out that a world-class design and fashion centre as announced in the 1998 Policy Address would be of more practical use in addressing the needs of the garment industry. The industry also needed to be transformed from original equipment manufacturing (OEM) which merely involved the taking of orders from overseas' customers to original design manufacturing (ODM) which focused on product design based on overseas customers' product requirements. To add value to product design, she considered that the R&D centre should also assist manufacturers to further advance from ODM to original brand manufacturing (OBM) through applying R&D results. The Chairman was very concerned that if manufacturers chose to set up their production base in the Mainland due to lower costs without aspiring to move up the value chain, the local economy would not benefit in terms of job opportunities and value-added economic activities.

24. In response, C for I&T stressed that one of the major tasks of the R&D centre for textile and clothing was to facilitate the industry to move up the value chain by upgrading the production mode from OEM to OBM. Many companies had adopted OBM as a strategy for diversifying their product lines amidst keen competition in OEM. They considered the Mainland and other emerging markets a good testing ground for developing brand names. Nevertheless, C for I&T highlighted that the decision to shift to OBM or otherwise would hinge on a number of factors including the local availability of the required technologies and innovative design. As such, he believed that the development of new technologies would benefit various sectors of the textile and clothing industry. For example, advanced garment technologies could enhance

production efficiency and product quality. Nano-materials and related processing technologies could be applied in the processing of smart and intelligent materials and the production of new yarn types.

25. As regards support for innovative design, C for I&T said that while fashion design was creative art, it could be enhanced by technology. The R&D centre might make use of fabric technologies for developing sophisticated and fashionable fabrics, such as 3D fabric design. In the past, funding from ITF had also been deployed for enhancing the training and capabilities of fashion design personnel. C for I&T highlighted that in a globalized economy and following the removal of quotas on textile and clothing in 2005, the textile and clothing industry would face enormous challenges. To remain competitive, the local textile and clothing industry needed to build on its strong foundation and adopt new and innovative technologies to excel in high value-added manufacturing.

#### *R&D for Chinese medicine*

26. On R&D in Chinese medicine, C for I&T informed members that about two years ago, the Hong Kong Jockey Club Charities Trust had pledged to donate HK\$500 million to support the Institute of Chinese Medicine (ICM) set up under ASTRI. ICM mainly provided R&D support to the Chinese medicine industries in both Hong Kong and the Mainland.

#### Review of Applied Research Fund

27. Members noted that the ARF had recorded a loss of 48% as at end of March 2004. Referring to the Administration's statement in paragraph 29(a) of its paper that investment decisions of ARF were always torn between its public mission and the pursuit of financial return, the Chairman enquired if financial return was one of the intended objectives when the Fund was first set up.

28. In response, the Assistant Commissioner for Innovation and Technology (Infrastructure) (AC for I&T(I)) recalled that when the ARF was set up in 1993, the venture capital market in Hong Kong was relatively small and the macro environment was not highly conducive to the local development of technology based ventures. As such, the Government set up the ARF with a view to promoting applied research and development in the private sector through the provision of financial assistance, in the form of seed money, for worthwhile projects. Prior to the review by the former Industry Department in 1998, ARF provided funding support to technology ventures principally on a loan basis and was administered by civil servants. Following the review, it was considered that professional fund managers should be engaged to manage the investment of ARF. Apart from a need to fulfil its public mission, there was an expectation that ARF should also generate a financial return on its investment. AC for I&T(I) further pointed out that over the last decade, the venture capital industry had grown significantly and become well developed in Hong Kong. Moreover, the strategic framework for innovation and technology development was now being realigned to ensure that government and industrial investment would result in a

more relevant critical mass of output. As such, it was proposed that the arrangements for ARF should be suitably revised to tie in with the new strategic framework for innovation and technology development.

29. While agreeing with the Administration that the performance of the ARF had been lacklustre since its inception in 1993, the Chairman pointed out that the major shortcoming of the ARF might be the absence of an exit arrangement which should have been agreed with the private-sector fund managers when they were engaged to manage the investment of ARF in 1998. She considered that an exit strategy should be clearly set out for the fund managers to follow during the contract period.

30. In response, C for I&T advised that there was an exit plan for ARF. The ARC would cease making new investments after the expiry of the contractual investment period in March 2005, but would continue to monitor and oversee existing investments. The Administration also planned to inject the residual balance of the ARF (some \$400 million) into the ITF to augment the pool of resources to support the industry.

31. Mr SIN Chung-kai expressed his support for cessation of new investments under the existing ARF model. However, referring to established practices of public finance, he said that it would appear that the balance of the ARF should be ploughed back into the General Revenue Account and become part of the general revenue, while the ITF should seek further government funding injection if necessary. Although he would not object in principle to the proposed lateral transfer of funds since both the ARF and ITF were set up to support innovation and technology development, Mr SIN urged the Administration to ensure that the transfer of funds in question was in order and that it would not be taken as a precedent for other "inter-Fund" transfers to be effected by the Administration. Mr SIN further cautioned that the winding-down of existing investments should take place in a progressive manner to avoid causing too much disruption and impact to the companies concerned. In this regard, members noted from the Administration that the ARF would continue to operate until 2008 or later.

## **VI Consultation Document on Review of Certain Provisions of Copyright Ordinance**

LC Paper No. CB(1)661/04-05(01) -- Information paper provided by the Administration

LC Paper No. CB(1)448/04-05 -- Issuance of the consultation document on "Review of certain provisions of Copyright Ordinance"

LC Paper No. CB(1)689/04-05 -- Background brief on review of certain provisions of the Copyright Ordinance prepared by the Secretariat

32. At the invitation of the Chairman, the Deputy Secretary for Commerce, Industry and Technology (Commerce and Industry) (DSCIT(CI)) briefed members on the current consultation exercise on reviewing certain provisions of the Copyright Ordinance (CO) (Cap 528), which lasted from 9 December 2004 to 15 February 2005. Members noted that the consultation document covered a number of issues, including:

- (a) the scope of end-user criminal liability;
- (b) whether an exhaustive or non-exhaustive approach should be adopted for providing for copyright exemption;
- (c) end-user liability associated with parallel imported copies of copyright works;
- (d) circumvention of technological measures for copyright protection;
- (e) defence provision for employees against end-user criminal liability;
- (f) proof of infringing copies of computer programs in end-user piracy cases; and
- (g) rental rights for films.

DSCIT(CI) further advised that the consultation document had set out some options and relevant considerations for the various issues covered. The Administration had an open mind on how the various issues should be addressed and would study the views received before formulating the way forward. DSCIT(CI) said that the Administration planned to report the outcome of the consultation to the Panel and consult members on its proposals in the second quarter of 2005. It also intended to submit an amendment bill to the Council for consideration and enactment before the expiry of the Copyright (Suspension of Amendments) Ordinance 2001 (the Suspension Ordinance) in end July 2006.

#### Unauthorized downloading of copyright works from the Internet

33. Mr SIN Chung-kai said that the Democratic Party would provide a written response to the consultation document. He noted that the Customs and Excise Department (CED) had recently arrested a person for engaging in copyright piracy through peer to peer (P2P) file sharing activities on the Internet using the Bit Torrent (BT) software. Mr SIN enquired whether the CED had sought the assistance of the Internet service provider (ISP) concerned before making the arrest, and if yes, whether a court order had been obtained for the purpose of requiring the ISP to furnish relevant information on the Internet users and related activities to the enforcement agency.

34. In reply, the Senior Superintendent of the Intellectual Property Investigation Bureau of the CED (SS of IPIB/CED) confirmed that court orders

had been obtained by CED to require the provision of information by the ISP, and to enter the premises of the arrested person. He nevertheless confirmed that prior to taking actions, CED had been able to track down the copyright infringement act through its own round-the-clock monitoring effort.

35. Mr SIN Chung-kai understood that the Government might prosecute the person under section 118(1)(f) of CO, which provided that it was a criminal offence for a person to distribute infringing copies of copyright works to such an extent as to affect prejudicially the owner of the copyright. In this regard, he cautioned that while the unauthorized downloading of copyright works might not constitute a criminal offence, a person who used the BT software to download an infringing copy of a copyright work or fragments of it from the Internet was at the same time uploading the infringement copy for other users to download. The downloading act using the BT technology might therefore amount to a breach of section 118(1)(f) of CO because the downloaded fragment was in turn made available to other users. Mr SIN further said that according to the Hong Kong Internet eXchange, there was a 20% drop in online file-sharing activities in Hong Kong following the arrest. He believed that this case might have achieved some deterrent effect against file-sharing activities involving infringing copies of copyright works. He considered that if the Government intended to step up enforcement actions against such copyright infringing activities on the Internet to include the ordinary downloaders because of their uploading act which automatically resulted, this should be publicly announced and sufficient forewarning should be given.

36. In response, SS of IPID/CED said that CED's enforcement at this stage was targeted at those Internet users who had deliberately uploaded BT seeds of copyright works onto local discussion forums and newsgroups for sharing and distribution of the copyright works to other network users. In this connection, the Chairman urged the Administration to take note of technological changes when considering proposed amendments to CO. She also reminded members that the issue of unauthorized downloading of copyright works from the Internet would be discussed at the next Panel meeting in February 2005.

### Public consultation

#### *Consultation exercise by the Government*

37. Mr Ronny TONG referred to the public outcry when amendments to CO were implemented in April 2001 to expand end-user criminal liability, and stressed the need for adequate public consultation. As many sectors of the community would be affected by the provisions of CO, including any proposed criminal sanctions, Mr TONG considered that the duration of the current consultation exercise might be too short for the public to fully express their views.

38. In reply, DSCIT(CI) said that in preparing the present consultation document, the Administration had held detailed discussion with various groups of

copyright owners and users, including the commercial and educational sectors, the newspaper and publication sectors and newspaper cutting businesses. She assured members that the Administration would still maintain discussion with various stakeholders after the current public consultation period for the purpose of formulating the Government's proposals. DSCIT(CT) further pointed out that the issues contained in the consultation document were not new and had in fact been discussed by the public for some time. The present timeline had been worked out to help ensure that new amendments to CO could be considered by the Council and enacted before the Suspension Ordinance expired in end July 2006.

39. Expressing his support to further improve the CO, Mr CHAN Kam-lam urged the Administration to strike a reasonable balance between the interests of copyright owners and users. Notwithstanding that the Administration had undertaken to consult stakeholders, Mr CHAN considered that the Administration should take a more proactive role in promoting more public discussion of the subject. He strongly advised the Administration to hold briefing sessions for various sectors, trades and industries concerned during the consultation period with a view to addressing their concerns and any potential problems that might arise in future. Mr CHAN also suggested that the Administration should consider conducting public consultation by stages so as to achieve a better focus and exchange of views. Mr Ronny TONG also agreed with a more focused approach to conduct the consultation by stages.

40. Noting members' views, DSCIT(CT) pointed out that many copyright issues were inherently very controversial and there might be conflicting interests among different stakeholders. It would not be easy to work out a proposal that could satisfy the demands of all parties concerned. Nevertheless, the Administration would make the best endeavor to strike a reasonable balance between the interests of copyright owners and those of users. Regarding the current consultation exercise, DSCIT(CT) said that the Administration had disseminated information on the consultation document through Announcements of Public Interest, radio broadcasting and posters. The Administration would also attend briefing sessions held by the education sector and provide briefings to District Councils at their request. She also understood that the education sector and the film industry had organized their own seminars to facilitate discussion of the consultation document.

*(post-meeting note : The Government organized a public consultation forum on 5 February to facilitate the public's understanding of the issues covered in the consultation document and solicit their views.)*

#### *Scope of consultation*

41. Mr Ronny TONG was very concerned that the Administration had published the consultation document without stating a position. In view of the complex concepts involved, he considered that the Administration should provide some guiding principles such that the proposed amendments would meet the

needs for copyright protection and free flow of information. For example, Mr TONG considered that while news reports might be regarded as creative writing, they were by nature informative and were often produced to meet the public's right to know. As such, he suggested that the Government should examine whether news reports should be regulated as copyright works. Mr TONG pointed out that issues like the example cited by him might not necessarily be resolved through public consultation. Instead, the Government should formulate well-considered and substantive proposals in consultation with copyright experts and then examine these proposals with relevant stakeholders and the public.

42. DSCIT(CI) said that the Government fully recognized the need to take into account the possible impact of copyright liabilities on the community. The CO contained a number of exemption provisions which set out the purposes and circumstances under which certain copyright restricted acts would not be regarded as infringing. The exemptions were confined to a specified range of purposes and circumstances which included news reporting. When the Copyright (Amendment) Bill 2003 was considered by the relevant Bills Committee, there were suggestions from certain stakeholders representing copyright work users that Hong Kong should adopt a more liberal approach along the non-exhaustive "fair use" model in the United States (US). Under the US non-exhaustive model, an act would not be regarded as copyright infringing if it constituted "fair use" of a copyright work. In assessing whether an act constituted "fair use", the Court would consider a number of factors as set out in the US law and other relevant factors that the Court might determine having regard to the circumstances of the case in question. DSCIT(CI) said that the Government would further discuss with stakeholders in order to formulate proposals on copyright exemption taking into account views collected during the public consultation period.

43. While noting that the use of exemption provisions under a non-exhaustive regime might be a possible option, Mr Ronny TONG remarked that the application of the "fair use" concept might create legal uncertainty due to the lack of local precedents.

#### *Meeting with deputations by the Panel*

44. Noting the far-reaching implications of the proposals in the consultation document, the Deputy Chairman suggested that the Panel should meet with deputations and hear their views. While agreeing with the need to gauge the views of the public, Mr SIN Chung-kai pointed out that invitation of public views could be done at a number of junctures, viz, during the current consultation period, after the Administration had formulated specific proposals having regard to views received during the current consultation exercise, or when the relevant Bills Committee was formed. While it was a usual practice for bills committees to solicit public views, Mr SIN considered that it would be more cost-effective for the Panel to receive public views when the Administration's specific proposals were known. The Deputy Chairman agreed with Mr SIN on the

timing of inviting public views.

45. Sharing Mr SIN's view, Mr Ronny TONG expressed his reservation for the Panel to hold a public hearing at the present stage because undertaking this round of consultation should be the Administration's responsibility. He considered that the Panel should examine the Administration's specific proposals and invite the public to give views in due course.

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46. In reply to the Chairman on when the Administration could come up with its proposals, DSCIT(CI) recapped that it was the Administration's plan to report to the Panel the outcome of the consultation exercise and to seek members' views in the second quarter of 2005. To facilitate members' consideration, Mr CHAN Kam-lam requested the Administration to provide a report in writing on the views received during the current consultation and the Administration's responses.

## **VII Any other business**

47. There being no other business, the meeting ended at 4:35 pm