

立法會
Legislative Council

LC Paper No. CB(1)2270/04-05
(These minutes have been seen
by the Administration)

Ref: CB1/PL/CI/1

Panel on Commerce and Industry

Minutes of meeting
held on Tuesday, 19 July 2005, at 2:30 pm
in the Chamber of the Legislative Council Building

Members present : Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP (Chairman)
Dr Hon LUI Ming-wah, SBS, JP
Hon CHAN Kam-lam, SBS, JP
Hon SIN Chung-kai, JP
Hon Vincent FANG Kang, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Ronny TONG Ka-wah, SC

Members attending : Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Daniel LAM Wai-keung, BBS, JP

Members absent : Hon WONG Ting-kwong, BBS (Deputy Chairman)
Hon CHIM Pui-chung

Public officers attending : Agenda Item III

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
Deputy Director of Intellectual Property

Agenda Item IV

Mr Philip YUNG
Deputy Secretary for Commerce, Industry and
Technology (Commerce & Industry) 1

Ms Janet WONG
Head, MC6 Co-ordination Office
Trade and Industry Department

Ms Carolina YIP Lai-ching
Deputy Commissioner for Transport/ Transport
Services & Management

Mr KWAN Chi-wai
Acting Assistant Commissioner for Transport/Urban

Miss CHEUNG Siu-hing
Deputy Secretary for Security 1

Mr Peter YAM Tat-wing
Director of Operations
Hong Kong Police Force

Mr Bill SUEN Kwai-leung
Commandant (Police Tactical Unit)
Hong Kong Police Force

**Attendance by
Invitation** : Agenda Item III

Copyright owners associations

Business Software Alliance

Ms Anita LEUNG
Representative

Entertainment Software Association

Ms Monique WOO
Registered Foreign Lawyer (Lovells)

Federation of Hong Kong Filmmakers

Mr CHEUNG Tung-joe
Vice Chairman

Film Industry Response Group

Mr Peter LAM
Representative

Hong Kong Comics Federation

Mr Alan WAN
Secretary

Ms Sophia NG
Committee Member

Hong Kong and International Publishers' Alliance

Mr Simon LI
Convenor

Hong Kong Educational Publishers Association

Mr Rodney CHUI
Vice President

Hong Kong Information Technology Federation

Mr Charles MOK
Ex-officio Member

Hong Kong Kowloon and New Territories Motion Picture
Industry Association Ltd

Mr Woody TSUNG
Chief Executive

Hong Kong Publishing Federation Limited

Mr Sing WONG
Vice Chairman

Mr KE Wah-kit
Representative

Hong Kong Reprographic Rights Licensing Society

Ms Dillys YU
General Manager

Hong Kong Video Development Fund

Mr KUNG Tak-man
Chairman

Ms Clera CHU
Vice Chairman

International Federation of the Phonographic Industry (Hong Kong Group) Limited

Mr Ricky FUNG
Chief Executive Officer

Motion Picture Association

Mr HO Wai-hung
Director of Operations
Greater China

Mr Frank RITTMAN
Vice President
Asia Pacific

Movie Producers & Distributors Association of Hong Kong Limited

Mr Tony SHU Tat-ming
Executive Secretary

The Anglo-Chinese Textbook Publishers Organization

Mr Elvin LEE
Representatives

The Hong Kong Copyright Licensing Association Ltd

Mr Kevin LAU
Chairman

Educational/Professional bodies

Concern Group of the Education Sector on Copyright Law

Mr P K CHIU
Chairman

Dr Kevin PUN
Deputy Chairman

Hong Kong Professional Teachers' Union

Mr WONG Chi-man
Deputy Director
Organization Department

The Task Force on Copyright in Education

Dr Colin STOREY
University Librarian
The Chinese University of Hong Kong

Mrs Shirley LEUNG
Head of Public Services
University Library
The Chinese University of Hong Kong

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

Staff in attendance : Miss Anita HO
Assistant Legal Adviser 2

Ms Debbie YAU
Senior Council Secretary (1)1

Ms Sharon CHAN
Legislative Assistant (1)6

Action

I Confirmation of minutes and matters arising

LC Paper No. CB(1)2052/04-05

-- Minutes of meeting held on
21 June 2005

The minutes of the meeting held on 21 June 2005 were confirmed.

II Paper issued since last meeting

LC Paper No. CB(1)1991/04-05(01) -- Information on the financial position of the Applied Research Fund for the period of 1 March 2005 to 31 May 2005

LC Paper No. CB(1)2046/04-05(01) -- Information paper on the operation of the Open Bond System and follow-up issues related to the Dutiable Commodities (Amendment) Bill 2002

2. Members noted that two papers had been issued since last meeting.

III Proposals on various copyright-related issues

Presentation by the deputations

3. The Chairman welcomed the deputations and invited them to present their views on the Administration's proposals on various copyright-related issues. Members noted that 20 other submissions had been received from the following parties not attending the meeting:

1. Aristo Educational Press Ltd
2. Canotta Publishing Co Ltd
3. Chung Tai Educational Press
4. Greenwood Press
5. Hon Wing Book Co Ltd
6. Hong Kong Educational Publishing Co
7. International Publishers Association
8. Jing Kung Educational Press
9. Modern Education Network Limited
10. Modern Educational Research Society Ltd
11. Pilot Publishing Company Ltd
12. Pilot Publishers Services Ltd
13. Precise Publications Ltd
14. The Commercial Press (HK) Ltd
15. T H Lee Book Company Limited
16. Witman Publishing Co (HK) Ltd
17. Ying Lee Music Company

18. Cable and Satellite Broadcasting Association of Asia
19. Hong Kong Association of Banks
20. International Federation of Reproduction Rights Organizations

Business Software Alliance (BSA)
(LC Paper No. CB(1)2047/04-05(01))

4. Ms Anita LEUNG, representative of BSA, outlined BSA's response to the Administration's consultation paper on review of certain provisions of the Copyright Ordinance (CO) (Cap 528) as set out in its submission. She highlighted that according to a global software piracy study conducted by the International Data Corporation released in May 2005, the software piracy rate in Hong Kong in 2004 was estimated to be 52%, which was higher than those of other developed economies in the region. Ms LEUNG cautioned that the high level of software piracy rate would inhibit Hong Kong's aspiration of further developing into a knowledge-based economy and building itself into an IT hub. Ms LEUNG also pointed out that by introducing the proposed employees' defence, which was not available under similar legislation in other jurisdictions, the Government would send a wrong message to the local and international communities in relation to its stance on intellectual property (IP) rights protection and undermine the efforts that Hong Kong had taken over the years in this area of work.

Entertainment Software Association (ESA)
(LC Paper No. CB(1)2047/04-05(02))

5. Ms Monique WOO expressed the support of ESA for the Administration's proposal in respect of circumvention of technological measures for copyright protection. Sharing with members the difficulties in tracking down shop proprietors selling circumvention devices for the purpose of instituting civil action, she stressed that the problem of software piracy would be more effectively combated by way of criminal sanction against the manufacture/sale of circumvention devices. Regarding the proof of underlying infringement, Ms WOO pointed out that as the act of circumvention pre-supposed that an act of infringement would follow, the circumvention act was already a wholly predicate offence.

Federation of Hong Kong Filmmakers (the Federation)

6. Mr CHEUNG Tung-joe, Vice-Chairman of the Federation, expressed concern that due to the absence of a proper legislative framework to protect the interests of copyright owners, the number of film productions in Hong Kong continued to drop in 2005. He urged the Administration to waste no time in the formulation and finalization of effective legislation to safeguard IP rights and hence, the interests of film investors.

Film Industry Response Group (FIRG)
(LC Paper No. CB(1)2047/04-05(03))

7. Mr Peter LAM, representative of FIRG, was pleased to note that the Government had advocated support for the development of cultural and creative industries. However, he urged that the Administration should formulate the necessary legislative and administrative measures to facilitate the healthy development of the film industry. In particular, Mr LAM did not agree with the Administration's proposal that rental rights provisions should not commence operation until a reasonable amount of copyright items available in the existing rental market had been covered by rental licensing schemes. He called on the Administration to re-examine the need for such a pre-condition. On the suggestion that the 18-month period requirement for parallel importation of copyright works should be relaxed, Mr LAM stated FIRG's view that the existing restrictions should be retained, lest the creative industries would not be able to sustain.

Hong Kong Comics Federation (HKCF)
(LC Paper No. CB(1)2047/04-05(04))

8. Mr Alan WAN, Secretary of HKCF, welcomed the Administration's proposal to introduce rental rights for comic books. Given that some tea houses were making available comic books for leisure reading by their customers, he considered that this form of service should be treated as equivalent to renting comic books to the customers concerned. As such, the Administration should include this kind of service into the scope of rental rights under the proposed legislation. Mr WAN also said that certain rental shops of comic books intended to cover up their rental services business by disguising it as trading of second-hand comic books in order to avoid liability under the proposed rental rights provision. He requested the Administration to plug this possible loophole in future legislation.

Hong Kong and International Publishers' Alliance (HKIPA)
(LC Paper No. CB(1)2047/04-05(05))

9. Mr Simon LI, Convenor of HKIPA, urged that the scope of business end-user criminal liability be extended to cover printed works. He considered the present treatment unfair and wrong because it rewarded unscrupulous businesses and denigrated the hard work and creativity of honest authors and publishers. It also placed Hong Kong in violation of its obligation under Article 61 of the World Trade Organization (WTO)'s Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIP). On new criminal liability for copyright infringement/distribution of copyright infringing printed works, Mr LI requested that the new provision should also cover digital versions of printed works because infringing digital copies of printed works also threatened the interests of copyright owners. With regard to the "safe harbour" provision against criminal liability, Mr LI advocated that users of copyright works must meet a combination of thresholds of the "safe harbour" (e.g. percentage of book

copied for distribution, the equivalent retail value of copied material, the number of infringing copies made) in order to be eligible for the "safe harbour" provision. HKIPA also objected strongly to the decision to exempt from criminal liability all non-profit making schools and profit-making schools which received government subvention.

Hong Kong Educational Publishers Association (HKEPA)
(LC Paper No. CB(1)2047/04-05(06))

10. Mr Rodney CHUI, Vice President of HKEPA, expressed strong objection to the proposal to exempt non-profit making educational establishments and educational establishments subvented by the Government from the proposed criminal liability for copying/distribution of copyright infringing printed works. HKEPA considered that an exemption would be allowed only if it could meet the following requirements:

- (a) the exemption expired after a certain period of time within which the establishment could enter into licensing arrangements with the copyright owners;
- (b) it was accompanied by a government review of the practices of educational establishments and the extent to which they had entered into available licensing arrangement;
- (c) it applied only to bona fide teaching purposes; and
- (d) it did not apply to infringement of textbooks or other materials marketed primarily for instructional purposes.

On fair dealing for education and public administration, Mr CHUI pointed out that its application would become much more complex if copyright works were accessible over the Internet because the use of the copyright works, instead of being limited, would run out of control. As such, technological safeguards should be in place to limit the extent of fair use of the copyright works.

Hong Kong Information Technology Federation (HKITF)
(LC Paper No. CB(1)2047/04-05(17))

11. Mr Charles MOK, Ex-officio Member of HKITF, highlighted the key concerns of HKITF as follows:

- (a) HKITF objected to the introduction of a specific employees' defence. Since successful prosecution at present was already difficult and rare, it would become even harder if such a defence was in place.
- (b) HKITF welcomed the introduction of a new criminal offence against the directors or partners of a company as this might encourage more responsible corporate governance and facilitate successful prosecution of operators of infringing businesses.
- (c) On proof of infringing copies of computer programmes in end-user liability cases, HKITF believed that businesses should be responsible for software asset management while the Government

- should enact and strengthen the relevant law.
- (d) HKITF welcomed the Government's proposal not to introduce a general non-exhaustive fair use regime along the US model. However, HKITF requested for more information on the factual circumstances under which "fair dealing for education and public administration" would be allowed.
 - (e) HKITF welcomed the introduction of a new criminal offence against the circumvention of technological measures for copyright protection.

Hong Kong Kowloon and New Territories Motion Picture Industry Association Ltd (MPIA)

(LC Paper No. CB(1)2047/04-05(08))

12. Mr Woody TSUNG, Chief Executive of MPIA, urged that all the existing restrictions on parallel imports of copyright works, including the 18-month period during which parallel imported copies would attract criminal liability, should be retained to protect the copyright of movies, in particular productions of a smaller scale. MPIA objected to the Administration's proposal that the rental rights provision should not commence operation until a reasonable amount of copyright items available in the existing rental market had been covered by rental licensing schemes. MPIA considered that such a pre-condition would place copyright owners in a disadvantaged position.

Hong Kong Publishing Federation Limited (HKPF)

(LC Paper No. CB(1)2047/04-05(07))

13. Mr Sing WONG, Vice Chairman of HKPF, summarized the position of HKPF as follow:

- (a) HKPF questioned the Administration's proposal to adopt a non-exhaustive fair dealing approach for use of copyright works for education and public administration purposes. HKPF suggested that such a provision, if enacted, should be accompanied with a guidance note on the international interpretation of fair dealing with a view to enhancing the understanding of the parties concerned on the scope of the exemptions.
- (b) HKPF strongly objected to the suggestion of some parties to shorten the 18-month period during which parallel imported copies would attract criminal liability because this arrangement might, inter alia, affect the local market and interests of copyright owners, drive away foreign investors and encourage pirated copies disguised as parallel imported copies.

Hong Kong Reprographic Rights Licensing Society (HKRRLS)
(LC Paper No. CB(1)2047/04-05(09))

14. Ms Dillys YU, General Manager of HKRRLS, elaborated on the following points in the submission of HKRRLS:

- (a) HKRRLS strongly urged that the scope of business end-user criminal liability should be extended to cover printed works. Otherwise, Hong Kong would violate its obligation under Article 61 of the WTO's Agreement on TRIP.
- (b) HKRRLS strongly objected to the proposal to exempt non-profit making educational establishments and educational establishments subvented by the Government from the proposed criminal liability for copying/distribution of copyright infringing printed works.
- (c) HKRRLS was concerned about the Administration's proposal to repeal section 45(2) of the CO and remove the existing restriction that the permitted acts of reprographic copying of passages from published works by educational establishments would not be permitted if there were relevant licensing schemes granting authorizations for the work concerned. HKRRLS considered that the best and most efficient way to manage educational uses was to encourage voluntary agreements between copyright owners and educational establishments.

Hong Kong Video Development Fund (HKVDF)
(LC Paper No. CB(1)2047/04-05(10))

15. Ms Clera CHU, Vice Chairman of HKVDF, introduced the main points in HKVDF's submission:

- (a) HKVDF supported the Government's proposal to retain all the existing restrictions on parallel imports of copyright works as any relaxation to allow parallel importation of low-priced copies would change the landscape and ecosystem of the movie industry in Hong Kong. It would also encourage the entry into Hong Kong of pirated copies disguised as parallel imported copies.
- (b) HKVDF pointed out that it was necessary to strengthen legislation to protect copyright works in the digital environment in Hong Kong. Otherwise, the proposed fair dealing for education and public administration purposes would enable educational establishments and public bodies to obtain unlimited digital copies of copyright works.

International Federation of the Phonographic Industry (Hong Kong Group) Limited (IFPI)

(LC Paper No. CB(1)2047/04-05(11))

16. Mr Ricky FUNG, CEO of IFPI, expressed the support of IFPI for the Government's proposal to maintain the current approach to adopt an exhaustive fair dealing approach. On fair dealing for education and public administration, he held the view that in the absence of adequate copyright protection in a digital environment, the proposal should not be taken lightly if the exemption would cover on-line digital copies of musical visual/sound recordings. Mr FUNG urged for the early introduction of a digital rights management (DRM) system in Hong Kong to safeguard the interests of copyright owners. Mr FUNG welcomed the Administration's proposal to retain all the existing restrictions on parallel imports of copyright works, including the 18-month period during which the commercial dealing of parallel imported copies would attract criminal liability.

Motion Picture Association (MPA)

(LC Paper No. CB(1)2047/04-05(12) and CB(1)2170/04-05(01))

17. Mr Frank RITTMAN, Vice President, Asia/Pacific of MPA, highlighted that MPA supported the Government's proposal on the scope of business end-user possession criminal liability, fair dealing provisions and restrictions with regard to parallel importation of copyright works. However, Mr RITTMAN considered that providing civil remedies alone to the acts of circumventing effective technological measures for copyright protection was insufficient. He urged that criminal penalties should also be considered. Notwithstanding that Hong Kong adhered to the minimum international standards of 50 years *post mortem auctoris* protection, Mr RITTMAN informed members that currently, 68 countries, including Japan, Singapore and Australia, provided a longer term of protection. The United States (US), for example, extended its term of protection by an additional 20 years.

Movie Producers and Distributors Association of Hong Kong Limited (MPDA)

(LC Paper No. CB(1)2047/04-05(13))

18. Mr Tony SHU, Executive Secretary of MPDA, stressed the importance of education and publicity in the protection of IP rights. He understood that the Administration was exploring the possibility of including IP rights as one of the subject matters under the General Education course for secondary school students in Hong Kong. On the four issues relating to the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty, Mr SHU urged the Administration to expedite relevant legislative amendments.

The Anglo-Chinese Textbook Publishers Organization (ACTPO)
(LC Paper No. CB(1)2047/04-05(14))

19. Mr Elvin LEE, representative of ACTPO, shared the view of HKEPA with regard to fair dealing for education and public administration and parallel importation of copyright works.

The Hong Kong Copyright Licensing Association Ltd (HKCLA)
(LC Paper No. CB(1)2047/04-05(15) (revised version issued on 20 July 2005))

20. Mr Kevin LAU, Chairman of HKCLA highlighted that HKCLA supported the free flow of information and that many newspaper publishers had made available their newspapers on the Internet for the public's perusal. While supporting the Administration's proposed fair dealing for education and public administration, HKCLA urged for criminal sanction against substantial infringement of copyright works. Notwithstanding the fact that most establishments in Hong Kong needed to reproduce quite a number of newspaper clippings for internal reference every day, Mr LAU said that according to his knowledge, only about 10% of the 1 110 or so listed companies in Hong Kong had entered into the one-stop licensing arrangement to obtain the reproduction rights from the publishers/copyright owners. HKCLA considered that a reasonable and enforceable quantitative threshold should be set to delineate "substantial infringement" so that such users of copyright works could be held criminally liable.

Concern Group of the Education Sector on Copyright Law (the Concern Group)
(LC Paper No. CB(1)2047/04-05(16))

21. Mr P K CHIU of the Concern Group welcomed the Government's proposal to retain the existing permitted acts in the copyright law pertaining to the right of an individual to use copyright materials for private study and research. On the proposed non-exhaustive fair dealing approach for use of copyright works, he suggested that all the four factors proposed by the Administration (vide paragraph 23 of the Administration's paper CB(1)1792/04-05(05)) should be taken into account by the court when considering whether or not certain acts constituted fair dealing. Moreover, Mr CHIU considered that the fair dealing approach should be technologically neutral and should cover the use of copyright material in the digital environment. On the scope of exemption, Mr CHIU pointed out that there were some private schools in Hong Kong which were not profit-making and therefore, should also be given exemption from business end-user possession criminal liability.

Hong Kong Professional Teachers' Union (HKPTU)
(LC Paper No. CB(1)2087/04-05(01))

22. Mr WONG Chi-man, Deputy Director of the Organization Department, HKPTU, welcomed the Administration's proposal to exempt non-profit making educational establishments and educational establishments subvented by the

Government from the proposed criminal liability. Mr WONG urged that when considering whether or not certain acts constituted fair dealing, the court should take only into account the four factors proposed by the Administration (vide paragraph 23 of the Administration's paper CB(1)1792/04-05(05)). Otherwise, there would be a lack of certainty and users of copyright works for educational purpose might find it difficult to determine whether certain acts fell within or outside the scope of fair dealing.

The Task Force on Copyright in Education (TFCE)
(LC Paper No. CB(1)2047/04-05(18))

23. Dr Colin STOREY said that TFCE welcomed the Government's proposal to adopt a non-exhaustive fair dealing approach for education and public administration, to prescribe conditions to provide that libraries could make replacement copies which involved medium shifting and to exempt educational establishments and libraries from criminal and civil liabilities for parallel imports of copyright works. On the proposed exemption in relation to circumvention of technological measures for copyright protection, Dr STOREY urged that the exemption should cover other areas of research in addition to cryptography.

Preliminary response of the Administration

Admin

24. Noting the concerns and views expressed by the deputations, the Deputy Secretary for Commerce, Industry and Technology (Commerce and Industry) (DSCIT(CI)) said that the Administration would continue to actively discuss the details of the proposals with all stakeholders concerned with a view to refining the proposals for inclusion into the draft amendment bill. As requested by the Panel, the Administration hoped to brief Members in October 2005 on the proposed thresholds for the new business end-user copying/distribution offence for certain printed works and other refinements, if any, to the preliminary proposals.

Discussion with deputations and the Administration

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|----------------------------------|--|
| LC Paper No. CB(1)1792/04-05(05) | -- Information paper provided by the Administration |
| LC Paper No. CB(1)1819/04-05 | -- Updated background brief on review of certain provisions of Copyright Ordinance prepared by the Secretariat |
| LC Paper No. CB(1)2052/04-05 | -- Minutes of Panel on Commerce and industry on 21 June 2005 (paras. 30 - 45) |

Copyright of news-related works

25. Mr Ronny TONG recapped his concern that legislation on copyright protection should not impede the free flow of information which was a major indicator of an open society. He considered it highly important to define clearly the scope of regulation and cautioned against any legislative amendments to provide criminal sanction that might go beyond copyright protection. Considering that copyright protection was mainly grounded on the creativity involved in the copyright works, Mr TONG remarked that as news reports contained mostly factual information and hence might be less creative in nature than other copyright works, news reports should not be subject to the some extent of copyright protection and sanctions as in the case of other copyright works.

26. Mr Kevin LAU of HKCLA did not agree fully with Mr Ronny TONG. From his perspective as an experienced practitioner in the newspaper industry, Mr LAU stressed that good news reporting was actually the result of substantial capital investment and the fruit of the intellectual input and hard work of many people over a long period of time. In fact, as revealed in a recent court case, the scope of "news" covered current and public affairs, commentaries and entertainment information. As such, the IP rights underlying news reports should be adequately safeguarded as other copyright works. However, Mr LAU was in support of the Administration's proposal to exempt from copyright restriction "fair dealing" for the purposes of education and public administration.

27. Mr Ronny TONG expressed his view that there might not be a direct relationship between the amount of commercial investment in producing a copyright work and the extent of its creativity. He acknowledged that news reports were copyright works. However, in consideration of the public role of news reports in fulfilling the public's right to know and in facilitating the free flow of information in society, Mr TONG opined that it is appropriate to subject this type of copyright works to less stringent restriction.

28. On the concern about making private copies of a copyright work, Mr Kevin LAU of HKCLA said that while it was generally considered acceptable for an individual to make a small number of copies of a copyright work for private use, HKCLA was against those business establishments, such as some listed companies in Hong Kong, which had made substantial copies of newspaper clippings published by HKCLA's members in a regular and systematic manner on their own instead of entering into the one-stop licensing agreement. On licensing fees, Mr LAU said that for small establishments with less than five users and reproducing less than 100 newspaper clippings a month, the annual fee was charged at a flat rate of \$500. The licensing fee for higher volume usage varied according to the number of users and newspaper clippings reproduced. On average, the annual fee was about \$200 per newspaper.

29. As the level of subscription fees charged was not high and the income foregone for the copyright owners was therefore relatively small, Mr Ronny TONG expressed his reservation on whether it was cost-effective to institute

actions against copyright infringement involving newspaper reports. In this regard, Mr Kevin LAU of HKCLA pointed out that the infringement problem could be more serious than what had surfaced as there were many business establishments in Hong Kong many of which would need to reproduce newspaper clippings for business purposes every day. Mr LAU would provide further information on the number of companies which had been licensed to use the services and the types of the service plans involved in order to shed more light on the issue.

(post-meeting note : The further submission provided by HKCLA was circulated to members vide LC Paper No. CB(1)2201/04-05(01) on 17 August 2005).

30. Ms Audrey EU depicted a scenario in which a website maintained by a community group broadcast a short video containing news shots extracted from the news footage owned by different commercial television broadcasters, and questioned whether such an arrangement would constitute copyright infringement or could be regarded as "fair dealing".

31. Mr Kevin LAU of HKCLA said that news video shots were IP works which should be legally protected. He commented that if the short video in question was used for business purpose, the producer of the video should be subject to business end-user criminal liability. Whether the video in question could be exempted from copyright restriction would be subject to the fair use provisions in the future legislation. In this connection, Mr Ronny TONG advised that from a legal point of view, an infringement act would only arise if there was substantial reproduction of a copyright work.

32. Referring to the aforesaid scenario, Ms Audrey EU said that it might not be the intention of the video producer to infringe the copyright of the works but to facilitate the free flow of information, and that such an act would unlikely affect the business operation of the broadcasters concerned. Referring to his experience in clearing the copyright for certain news-related material, Mr Kevin LAU of HKCLA remarked that under section 39 of the CO, fair dealing with a work for the purpose of reporting current events would not infringe any copyright in the work if it was accompanied by a sufficient acknowledgement. Ms Audrey EU however pointed out that the shot in question might have been taken a few months' ago and therefore not related to current events. In this regard, DSCIT(CI) supplemented that the "fair dealing" provision in section 39 of CO also applied to fair dealing with a copyright work for the purpose of criticism or review.

Parallel importation of copyright works

33. Mr SIN Chung-kai recalled that when the 18-month period relating to parallel importation was set in about 1997, foreign films were released for viewing at cinemas in Hong Kong approximately one year after they had been shown in their original markets. He enquired whether consideration would be

given to relaxing the 18-month period requirement having regard that nowadays, many new films were released worldwide on the same day.

34. In this connection, Mr Peter LAM of FIRG highlighted that a film distributor usually entered into a five-year licensing arrangement for a movie. Shortening the 18-month period would only benefit traders of parallel imported copies of the movies concerned as they could take advantage of the marketing effort of the distributor earlier on. Furthermore, relaxing the 18-month period requirement would also encourage illegal traders to make available in the market pirated copies disguised as parallel imported copies. Both scenarios would bring about a detrimental impact on the development of the film industry. Notwithstanding the five-year licensing arrangement, Mr Tony SHU of MPDA noted that some film distributors had already taken into account the availability of parallel imported copies from the 19th months onwards when considering the budget in distributing the film. Mr LAM and Mr SHU pointed out that any proposal to further shorten the 18-month period would deter investment interests and might even deprive local consumers' choice of films. Mr Ricky FUNG of IFPI further stressed that the existing restriction on parallel importation of copyright works not only protected the interests of copyright owners but also helped foster the development of the creative industry in Hong Kong.

35. On parallel importation of printed works, Mr Simon LI of HKIPA referred to certain types of works such as dictionaries, the publication of which had engaged tremendous effort and resources. It might take several years before the publishers concerned could recover the costs of production from the sales turnover and begin to make a profit. As such, it would be very unfair to the publishers or other copyright owners if the current 18-month period was further shortened to facilitate the acquisition of parallel imported copies of the copyright works.

36. Mr Alan WAN of HKCF referred to the usual lead time between the first publication of an overseas comic book title and the time the Hong Kong agent could obtain a licence to distribute the book in Hong Kong and urged that the 18-month period requirement should be maintained to protect the rights of the copyright owners and local distributors. Mr WAN also agreed to provide further written information in respect of HKCF's stance against relaxing the existing criminal and civil liabilities pertaining to parallel imported copies of copyright works.

(post-meeting note : The further submission provided by HKCF was circulated to members vide LC Paper No. CB(1)2190/04-05(01) on 12 August 2005).

37. Mr Andrew LEUNG recapped his view that the objective of CO was to protect IP rights and not the business interests of the related parties of the copyright owners such as the authorized dealers or retailers of the copyright works. He pointed out that nowadays, many people could purchase a product or a piece of copyright work from an overseas source directly through the Internet.

As such, it was unfair to impose restriction on the parallel importation of movies, television drama or musical recording within the first 18 months of their publication.

38. In this regard, Mr Ricky FUNG of IFPI said that as he understood, the existing restrictions on parallel imports of copyright works did not apply to cases in which the copyright works were imported for private and domestic use. However, Mr FUNG pointed out that under WTO's Agreement on TRIP, each WTO member was at liberty to restrict or open parallel importation of copyright works according to its economic and trading policies. He considered that Hong Kong should take further steps to protect the copyright owners' right, as well as domestic distribution right of a foreign copyright work so as to foster a knowledge-based economy in Hong Kong.

Circumvention of technological measures for copyright protection

39. While appreciating the merits of a DRM system, Mr SIN Chung-kai sought deputations' views as to how the relevant bill should provide for such a system.

40. In response, Mr Ricky FUNG of IFPI recapped that effective protection against circumvention of technological measures was essential to safeguard the access/copy control of copyright owners' electronic files on the Internet. Noting that legislative provisions regarding devices designed to circumvent copy-protection, and rights/remedies in respect of unlawful acts to interfere with rights management information were available under sections 273 and 274 of the CO, Mr FUNG highlighted that a DRM system could facilitate copyright users to differentiate easily whether a certain electronic file was a genuine or pirated copy and whether it was legitimate to access/copy it. At the request of the Chairman, Mr FUNG agreed to provide further information in this regard.

(post-meeting note : The further submission provided by IFPI was circulated to members vide LC Paper No. CB(1)2190/04-05(03) on 12 August 2005).

41. Dr Kevin PUN, Deputy Chairman of the Concern Group, delineated a DRM system from technological measures for copyright protection the circumvention of which would be subject to the proposed civil and criminal liabilities. While welcoming the proposed exemption for research into cryptography from civil liability, Dr PUN urged the Administration to consider carefully the scope of the proposed exemption so as to avoid hindering scientific research and technological development. Dr PUN then shared with Members and the Administration his understanding of the circumstances in which the act of circumvention would be exempted under the US legislation. On DRM, Dr PUN said that it was a software system to keep track of information on copyright works, including names of the copyright owners, details of licensing arrangements, if any, and the exploitation record of the copyright works on the Internet. The DRM system would enable the copyright owners to trace and take

action against users who had infringed the copyright of their IP works.

42. In this connection, the Chairman invited Dr PUN to provide further information in respect of circumvention of technological measures on copyright protection, as well as overseas practice and related legislation.

(post-meeting note : The further submission provided by Dr PUN was circulated to members vide LC Paper No. CB(1)2193/04-05(01) on 16 August 2005).

43. Ms Audrey EU was concerned whether sharing the password to access a sound file on the Internet was a copyright infringement act and how the users could tell whether it was lawful or otherwise to download a musical file from the Internet.

44. Mr Ricky FUNG of IFPI said that without a DRM system, it was difficult, if not impossible, for users to tell whether the copyright of a sound file had been cleared. However, he understood that enforcement actions were usually targeted at those who owned a complete infringing copy of the copyright work and initiated sharing of the file containing the infringing copy. As regards ordinary users who downloaded the file, they should be discouraged to do so through public education. On playing music during webcasting, Mr FUNG said that IFPI had entered into a global agreement to enable relevant parties such as web radio broadcasters to obtain licences to play music during broadcasting.

45. Referring to the ESA's proposal to expand the scope of section 273 of the CO to cover both copy protection (or copy controls) and access controls (vide point 3 of ESA's submission (CB(1)2047/04-05(02)), Mr SIN Chung-kai questioned the need for the proposed expansion of section 273 of CO as it appeared that hacking activities could already be dealt with under existing section 161 of the Crimes Ordinance (Cap 200). In this connection, Ms Monique WOO representing ESA and Mr Ricky FUNG of IFPI agreed to respond to Mr SIN's concern in writing after the meeting.

(post-meeting note : The further submission provided by ESA and IFPI were circulated to members vide LC Paper No. CB(1)2190/04-05(02) and (03) on 12 August 2005).

Summing up

Admin

46. The Chairman thanked the deputations' for attending the meeting and exchanging views with Members. She also requested the Administration to provide a detailed written response to the views and concerns of Members and deputations.

**IV Sixth Ministerial Conference of the World Trade Organization :
Facilitating Demonstrations, Restricted Access Zone, and Traffic
Management Plan**

- LC Paper No. CB(1)2047/04-05(26) -- Discussion paper provided by the Administration
- LC Paper No. CB(1)861/04-05(07) -- Information paper provided by the Administration
- LC Paper No. CB(1)1071/04-05 -- Minutes of Panel on Commerce and industry on 15 February 2005 (paras 40 - 48)
- LC Paper No. CB(1)2108/04-05(01) -- Note from Hon Daniel LAM Wai-keung on "Sixth Ministerial Conference of the World Trade Organization : Facilitating Demonstrations, Restricted Access Zone, and Traffic Management Plan"

Presentation by the Administration

47. The Panel noted that members of the Panel on Security and all other Hon Members had been invited to take part in the discussion of this item. At the invitation of the Chairman, Head, MC6 Co-ordination Office of Trade and Industry Department (Head, MCO) outlined the proposed arrangements to facilitate lawful demonstrations during the Sixth Ministerial Conference (MC6) of the WTO and to ensure that the activities were carried out peacefully and safely. The Deputy Commissioner for Transport/ Transport Services & Management (DC for T (TS&M)) introduced the traffic management measures to be put in place during the MC6 period.

48. With the aid of a short video on the protests and demonstrations during MC3, MC5 and the G8 meeting held this year, the Commandant (Police Tactical Unit) of Hong Kong Police Force (C(PTU)/HKPF) said that as indicated by overseas experience in recent years, large-scale international events had served as ready focal points for protesters against such issues as globalization, poverty and war. As could be seen from the video, some of the demonstrators had used disruptive or even violent forms of protest causing damage to property or even clashes with law enforcement officers. C(PTU)/HKPF advised that as there was a very high likelihood of various protests and demonstrations taking place in Hong Kong during the MC6 period, the Police was in the course of identifying a number of possible sites as designated public activity areas (DPAAs) to enable demonstrations to take place in a way that would be safe for demonstrators and the general public, and which would cause the least inconvenience to the general public. There was also a need to set up a restricted access zone (RAZ) around

the Hong Kong Convention and Exhibition Centre (HKCEC) to ensure the safe and uninterrupted conduct of MC6. C(PTU)/HKPF then briefed members on the coverage of the proposed RAZ and related arrangements.

Restricted Access Zone and Designated Public Activity Areas

49. Mr Jeffrey LAM highlighted the positive impact of hosting MC6 which could help showcase the strengths of Hong Kong. Noting the overwhelming protest and demonstration activities during past MCs, he supported the Administration's proposal to designate DPAAAs and RAZ to ensure the safety of MC6 participants and the general public, in particular local residents, students and retailers in the vicinity of HKCEC. Mr LAM enquired whether the Administration had made reference to relevant overseas experience in designating DPAAAs and RAZ for MC6.

50. On the RAZs designated in connection with large-scale international events held overseas, the Director of Operations of Hong Kong Police Force (D Ops/HKPF) informed members that the extent of RAZs for MC5 as well as G8 meetings held in 2002, 2003 and 2005 were about 7 km, 6.5 km, 30 km and 10 km respectively. He remarked that since no RAZ had been designated for MC3 held in Seattle, the meetings of the Ministerial Conference on the first day had to be cancelled due to the violent demonstrations at the scene. In reply to Mr Jeffrey LAM's further enquiry, Head, MCO advised that access arrangements would be made for guests staying in the hotels adjacent to HKCEC.

51. Mr CHAN Kam-lam stressed the importance of ensuring the secure and smooth conduct of MC6 and minimizing the disruption caused to the normal activities of the community. As it was likely that demonstrators from all over the world would arrive in Hong Kong to join various protests during the period of MC6, Mr CHAN was concerned whether HKPF would take action against unlawful demonstrations.

52. In response, D Ops/HKPF said that while peaceful and orderly public protests and demonstrations were accepted by the community at large, the public would also expect similar activities during the MC6 period to be lawful and peaceful. To enable the demonstrations to take place in a safe and orderly manner during the MC6 period, HKPF was identifying a number of possible sites as DPAAAs. As regards action against unlawful demonstrations, D Ops/HKPF stressed that HKPF would prepare for all possible contingencies and take appropriate action as required by circumstances.

53. Referring to the map on the coverage of the proposed RAZ (Annex A of CB(1)2047/04-05(26)), the Chairman and Mr SIN Chung-kai enquired why the Tamar Site had been cordoned off as part of the RAZ and whether there was any intention to designate it as a DPAA for public activities. In reply, Head, MCO said that the Tamar site would be reserved for the use of the vehicle fleet for MC6 and related logistical needs (including limousines for the heads of delegations, shuttle bus services for delegates etc). D Ops/HKPF also assured

members that HKPF would work closely with all stakeholders concerned in designating DPAAAs.

54. In reply to the Chairman's enquiry on the timetable for the proposed legislation to give effect to the necessary arrangements, the Deputy Secretary for Security advised that the Administration would need to declare the proposed RAZ by way of a closed area order made under section 36 of the Public Order Ordinance (Cap 245) and that it was the Administration's intention to table the relevant order at the Legislative Council for negative vetting in October 2005.

Public activities

55. Mr CHAN Kam-lam sought information on the arrangements for crowd control and traffic measures during public processions, as well as the progress of the Administration's discussion with the Hong Kong People's Alliance on WTO (HKPAWTO).

56. In response, Head, MCO confirmed that staff of the MC6 Co-ordination Office (MCO) and HKPF had met with HKPAWTO, during which the Administration had reaffirmed its high regard for the freedom of expression and assembly, and its commitment to facilitating the lawful exercise of these rights. MCO had also met with some non-government organizations (NGOs) based in Geneva in March and June this year, as well as representatives of some NGOs from Asia, Europe and North America lined up by HKPAWTO at a meeting held in Hong Kong in end February 2005. Head, MCO said that in view of the scale and nature of MC6, an inter-departmental committee had been set up to consider applications for use of venues of the Leisure and Cultural Services Department during the MC6 period. As regards Victoria Park, Head, MCO advised that the venue would be reserved for MC6-related public activities but exact details could not be confirmed at this stage as it was still some months away from the event.

57. Mr SIN Chung-kai urged that the necessary arrangements should be finalized as early as practicable in order that NGOs which wished to hold public meetings during the MC6 period could make their own planning accordingly. While acknowledging the need to make early arrangement, Head, MCO explained that since the actual number of applications for using public places for meetings could not be ascertained at this stage, the exact details could only be decided later on when the overall situation became clearer.

Traffic measures

58. In reply to Mr CHAN Kam-lam's enquiry on the need to suspend two sightseeing tours in the harbour during the MC6 period, DC for T (TS&M) advised that the Administration would liaise with the tour companies to see if they could arrange to use piers outside the proposed RAZ.

59. The Chairman asked about the traffic measures along Gloucester Road which had already experienced heavy congestion all along. In reply, DC for T

(TS&M) said that the Administration would make the best endeavour to ensure a smooth traffic flow during the MC6 period. The Transport Department would take out contingency measures in response to unforeseeable changes. C(PTU)/HKPF highlighted that traffic management was part and parcel of the security arrangements, in particular in a densely populated place like Hong Kong. That was why one of the existing nine working groups set up in HKPF was dedicated to oversee and coordinate traffic management arrangements in relation of MC6 activities. The working group would critically examine the arrangements for public processions and to work in close collaboration with the Transport Department to make timely public announcement on special traffic measures during the MC6 period.

Other measures to ensure safety

60. Mr Andrew LEUNG remarked that unlike past demonstrations in Hong Kong which were usually held in a peaceful and law-abiding manner, demonstrations during international events in recent years such as past MCs and meetings of G8 had often attracted violent demonstrations by activists. While it was necessary to respect the freedom of expression, Mr LEUNG was very concerned that acts of violence should be properly prohibited. He enquired about the measures to be put in place to safeguard the general public as well as shops along the routes of the public processions.

61. In response, C(PTU)/HKPF highlighted that in response to the scale and nature of MC6, HKPF would prepare for all possible contingencies and fine-tune its strategy from time to time to keep up with the updated risk assessment nearer the time of MC6. C(PTU)/HKPF said that HKPF was aware of the trend in disruptive/violent tactics used by demonstrators in large-scale international events held overseas, such as using the loose bricks removed from pavements as projectiles against enforcement officers, and would work closely with relevant departments to ensure that acts of disruption or violence would be put under control.

62. In reply to Mr Andrew LEUNG's enquiry about the G8 meeting held in Scotland this month, C(PTU)/HKPF said that seven officers from HKPF had observed the policing of this event. Notwithstanding that there were more than 3 000 protesters and about 20 policemen were injured during the three-day G8 meeting, HKPF considered the overall security arrangement for the G8 meeting effective. They attributed the success of the event to the understanding and cooperation of the general public as well as the extensive security perimeter in place. HKPF would draw on the relevant experience in devising the security plan for MC6 having regard to the special circumstances of Hong Kong.

Publicity

63. Mr Jeffrey LAM highlighted the need to make timely announcement so that local residents and visitors, in particular shop owners in the vicinity, would be aware of the security arrangements and traffic measures. Mr Daniel LAM

expressed his support for the proposed RAZ and urged that shop owners in the vicinity of HKCEC should be notified of all related arrangements well in advance.

64. In response, Head, MCO advised that the Administration had held a briefing session for Wan Chai businesses/residents on 13 July 2005 and another session would take place on 20 July 2005. According to the Education and Manpower Bureau, a majority of schools in Wan Chai and nearby districts planned to designate 13 December 2005, the first day of the six-day Ministerial Conference, as a discretionary school holiday or staff development day so as to alleviate the traffic load. Head, MCO further said that staff of the MCO would also reach out to the businesses in the vicinity of HKCEC proactively and hold sector-specific briefings for them. For example, through the efforts of different bureaux, briefings had been held for concerned parties on airport and port facilities, the supply of water and electricity, banking and financial services, transport services, hotels etc. C(PTU)/HKPF supplemented that overseas experience had shown that global chain-shops such as Starbucks or McDonald's could be targets of protests against globalization. To assist these shop owners, HKPF had arranged to hold briefings with them on measures they could take to enhance their safety in the run-up to and during MC6.

65. Mr Vincent FANG referred to the benefits brought to Hong Kong if MC6 was successfully hosted. As the timing for MC6 was in close proximity to the Christmas holidays, Mr FANG urged the Administration to see to it that the retail sector could continue to provide their services to visitors during the period in question. Mr FANG said that if necessary, he was prepared to support the Administration's request for additional resources to make MC6 a successful event hosted in Hong Kong.

66. In this connection, Head, MCO advised that according to the workplan on publicity for MC6, the Commissioner for Tourism would work in collaboration with the retail sector to help showcase Hong Kong's strength as Asia's world city. As regards financial support, Head, MCO thanked members for their concern and said that the Administration was also seeking commercial sponsorship for the event. Should there be funds available, more would be allocated to priority areas such as security where HKPF had been doing extensive preparations to cater for all possible scenarios.

Conclusion

67. Summing up, the Chairman called on the general public to support the hosting of a successful MC6 in Hong Kong. She also requested the Administration to spare no effort in keeping the disruption to the daily activities of the community to the minimum, and to ensure that all special arrangements were disseminated to the public in a timely manner with a view to promoting understanding and cooperation.

V Any other business

68. There being no other business, the meeting ended at 6:10 pm.

Council Business Division 1
Legislative Council Secretariat
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