

**立法會**  
**Legislative Council**

LC Paper No. CB(1)689/04-05

Ref : CB1/PL/CI

**Panel on Commerce and Industry**

**Meeting on 18 January 2005**

**Background brief on  
Review of certain provisions of the Copyright Ordinance**

**Introduction**

The Government published a consultation paper in December 2004 on the review of certain provisions of the Copyright Ordinance (Cap. 528) (CO). Public views are invited on the way forward on copyright liability and exemption. The Panel on Commerce and Industry will be briefed on the subject on 18 January 2005.

**Implementation of the Intellectual Property (Miscellaneous Amendments) Ordinance 2000**

2. Following the enactment of the Intellectual Property (Miscellaneous Amendments) Ordinance 2000, amendments to CO were implemented in April 2001 to introduce, inter alia, criminal liability for the use of infringing copies of copyright works in business (end-user criminal liability). While the principal objective was to combat rampant piracy in computer software and audio-visual products, the new criminal provisions also applied to photocopying of printed works, including newspapers and downloading of information from the Internet. Users of copyright works expressed grave concern about the adverse impact of the expansion. The public in general considered that the scope of the new criminal provisions was too wide and would hamper the dissemination of information in enterprises and teaching/educational activities in schools.

3. To address the concerns, the Copyright (Suspension of Amendments) Ordinance 2001 (the Suspension Ordinance) was enacted in June 2001 to suspend, until 31 July 2002, the operation of the criminal provisions except as they applied to computer programs, movies, television dramas and musical

recordings (the Four Categories of Works). Since then, the validity period of the Suspension Ordinance has been extended on three occasions up to 31 July 2006 to allow time for the Administration to formulate a long-term solution.

4. In October 2001, the Administration issued a consultation document entitled “Review of Certain Provisions of Copyright Ordinance” to consult the public on the following issues:

- (a) criminal provisions related to end-user piracy;
- (b) permitted acts for educational purposes;
- (c) permitted acts for visually impaired persons;
- (d) permitted acts related to free public showing or playing of broadcast or cable programme;
- (e) parallel importation of copyright works other than computer software;
- (f) unauthorized reception of subscription television programmes; and
- (g) licensing bodies.

### **Copyright (Amendment) Bill 2003**

5. Having regard to the views received during public consultation, the Administration introduced the Copyright (Amendment) Bill 2003 (the 2003 Bill) on 12 February 2003 which sought to, inter alia, make permanent the arrangements under the Suspension Ordinance whereby the scope of end-user criminal liability would be confined to the Four Categories of Works.

6. Following scrutiny of the 2003 Bill by the relevant Bills Committee, those provisions in the Bill which were related to criminal sanctions against illicit copy shops were enacted on 24 March 2004 and came into operation on 1 September 2004. The other proposals in the 2003 Bill were not enacted because views among various stakeholders were highly divided, in particular over the following issues.

#### Scope of end-user criminal liability

7. One of the most controversial proposals in the 2003 Bill was to confine the scope of end-user criminal liability to the Four Categories of Works. Stakeholders who were primarily copyright works users such as the educational sector, professional bodies and a number of local trade associations supported the proposal as it would relieve them of criminal liability in their possession and use of printed copyright works for informational and educational purposes. However, copyright owners, notably the publication industry, newspaper industry and some foreign chambers of commerce raised strong objection and queried the rationale for according greater copyright protection to computer programs but not other types of copyright works.

8. After a series of discussion, the Administration reported to the Bills Committee that some users in the educational sector agreed that the Administration could explore the possibility of expanding the scope of end-user criminal liability provided that “fair use” provisions similar to those of the Copyright Act of the United States were adopted and that the circumstances giving rise to end-user criminal liability and guidelines on “fair use” would be clearly spelt out and promulgated. In this regard, the Bills Committee noted that the Administration would maintain discussion with various stakeholders with a view to reaching some consensus.

#### Defence for employees against end-user criminal liability

9. To address the concern that employees might not be able to reject the use of pirated products for fear of losing their jobs, the Administration proposed in the 2003 Bill a defence for employees found in possession of an infringing copy of the Four Categories of Works in that they would not be criminally liable if such possession occurred in the course of his employment and the infringing copy in question was provided to him by or on behalf of his employer.

10. In submitting views to the Bills Committee, some copyright owners in the software industry expressed concern about possible abuse of the proposed defence. Instead, they suggested the introduction of a “whistle-blower” protection for employees so that an employee who complained about or rejected the use of infringing copies provided by his employer in the course of employment would not be terminated or discriminated against by the employer. The Administration indicated that it would need to examine the suggestion.

#### Non-commercial dealings of parallel imported copies

11. It was proposed under the 2003 Bill to remove certain civil and criminal liability associated with parallel imported copies. The effect was that a person would not incur any civil or criminal liability for importing parallel imported copies of copyright works, or for possessing such copies, for use in business, unless such importing or possession is for the purpose of commercial dealings.

12. The Bills Committee noted the support from the educational sector, Consumer Council and libraries as the proposal would facilitate the acquisition of copyright materials from overseas more speedily and at more competitive prices. Nevertheless, the publishing industry objected and cautioned that the proposal, if enacted, would adversely affect the business and employment of the local authorized distributors. The music and movies industries were worried that establishments such as Karaoke and coffee shops might parallel-import musical products and the VCD/DVD version of current movies. They considered that the relaxation would jeopardize the interests of the industries. The Administration undertook to re-consider the options for relaxation taking into account the interests of copyright owners and users.

## Outcome

13. In order to allow time for a more thorough review, the Administration had, with the agreement of the Bills Committee, deleted all those provisions in the 2003 Bill relating to end-user criminal liability so that only those provisions related to criminal sanctions against illicit copy shops were enacted.

14. Pending the outcome of further consultation with copyright works owners and users, the Administration moved a resolution to extend the effective period of the Suspension Ordinance for 24 months (up to 31 July 2006) during which the end-user criminal liability under the existing CO, as read together with the Suspension Ordinance, will remain in force. The resolution was passed on 24 March 2004. The Administration would aim to complete discussion with various stakeholders and introduce a fresh bill to the Legislative Council for enactment before July 2006.

## **The way forward**

15. In its consultation document issued in December 2004, the Government states that it has an open mind on how the various issues should be addressed. The consultation period will end on 15 February 2005.

Council Business Division 1  
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12 January 2005