

立法會
Legislative Council

LC Paper No. CB(1)1819/04-05

Ref : CB1/PL/CI

Panel on Commerce and Industry

Meeting on 21 June 2005

**Updated background brief on
Review of certain provisions of Copyright Ordinance**

Introduction

The Government published a consultation paper on 9 December 2004 on the review of certain provisions of the Copyright Ordinance (Cap. 528) (CO). Public views were invited on the way forward on copyright liability and exemption. The consultation period ended on 15 February 2005.

Background

2. Following scrutiny by a Bills Committee, provisions in the Copyright (Amendment) Bill 2003 (the 2003 Bill) relating to criminal sanctions against illicit copy shops were enacted on 24 March 2004 and came into operation on 1 September 2004. The other proposed provisions in the 2003 Bill were not enacted pending the Administration's further consultation with the stakeholders and the community. To this end, the consultation document published by the Government covered a number of copyright-related issues over which public views were sought :

- (a) the scope of end-user criminal liability;
- (b) whether an exhaustive or non-exhaustive approach should be adopted in 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.

Consideration by the Panel on Commerce and Industry

3. At the Panel meeting held on 18 January 2005, members noted the issues highlighted in the consultation document and raised the following concerns for the Administration's consideration.

Unauthorized downloading of copyright works from the Internet

4. In January 2005, the Customs and Excise Department arrested a person on suspicion of illegal distribution of copyright movies on the Internet through Bit Torrent (BT) software. Members noted that the Administration would prosecute the person under section 118(1)(f) of the Copyright Ordinance (Cap. 528) (CO). Nevertheless, having regard to the operational features of peer-to-peer (P2P) software such as BT, some members expressed reservation on whether the act in question would constitute an offence of distributing infringing copies of copyright works as provided under the aforesaid section. Some other members considered that the Administration should be prudent in the enforcement action targeting at P2P file-sharing activities so as not to jeopardize ordinary Internet users.

5. Some members noted that Internet piracy activities through P2P software such as BT had not been included as one of the issues in the consultation document. Pending the outcome of prosecution, they were concerned that if the infringing offence could not be dealt with under existing section 118(1)(f) of CO, then, it would be necessary for the Administration to review the effectiveness of existing provisions of CO in the light of changes in technologies.

The consultation exercise

6. Notwithstanding the publication of the consultation document, some members considered that the Administration should take a more proactive role in promoting public discussion on the subject. The Administration was urged to hold briefing sessions for various sectors, trades and industries so as to enhance their understanding of the proposals and facilitate their giving views.

7. Some members took the view that the Administration should not refrain from stating its position on copyright issues. Instead, it should formulate well-considered and substantive proposals to balance the needs for copyright protection and free flow of information. For example, there was a suggestion that news reports, which were by nature informative and often produced to meet the public's right to know, should not be regulated as copyright works.

The way forward

8. The Administration has agreed to formulate specific proposals and consult the Panel again, as well as provide a written report on the views received during the consultation exercise and the Administration's responses thereto. Members also note the Administration's intention to introduce an amendment bill into the Council for consideration and enactment before end July 2006 when the suspension arrangements for the provisions relating to end-user criminal liability will expire.

Council Business Division 1
Legislative Council Secretariat
17 June 2005