

Further Proposed Committee Stage Amendments to the Bill

Item	Concerns	Response/Proposed Amendments
1.	<p><u>Long title to the Copyright Ordinance</u></p> <p>The Copyright (Amendment) Bill 2006 (“the Bill”) contains various proposals to enhance copyright protection. The long title to the Ordinance needs to be updated to reflect the changes.</p>	<p>We will move a Committee Stage Amendment (CSA) to describe the long title to the Ordinance in more general terms.</p> <p>[Please see P. 3 of the marked-up copy of the Bill at Annex.]</p>
2.	<p><u>Clause 7(2A) – New section 35(6A) (presumption of importation to facilitate enforcement against parallel imports)</u></p> <p>The new section 35(6A) introduces presumptions for proof that a copy of copyright work was imported into Hong Kong. The presumptions are to facilitate enforcement against parallel imports. Our policy intent is that the presumptions would apply where in any proceedings a question arises as to whether a copy of copyright work (being the subject matter of the proceedings) is a parallel-imported copy. At present, there is no definition for a parallel-imported copy under the Copyright Ordinance. We describe a parallel-imported copy as an infringing copy by virtue of section 35(3) that was lawfully made in a country, territory or area where the copy was made. The qualifier “that was lawfully made in a country, territory or area where the copy was made” is meant to distinguish a parallel-imported copy from a pirated copy.</p> <p>At the meeting on 15 December 2006, Members examined the proposed CSA to introduce the new section 35(6A) [LC Paper</p>	<p>The issue of “lawfully made” is an objective fact and the presumptions would apply once the court is satisfied that this fact is established. This fact need not be in dispute before the presumptions could apply.</p> <p>To bring out the above intent, we have revised the new section 35(6A) as follows –</p> <p>“Where in any proceedings, a question arises as to whether a copy of a work that was lawfully made in the country, territory or area where it was made is an infringing copy by virtue only of subsection (3) , and it is shown –”</p> <p>[Please see P. 6 of the marked-up copy of the Bill.]</p>

Item	Concerns	Response/Proposed Amendments
	<p>No. CB(1)510/06-07(01)]. In that paper, the new section 35(6A) states that –</p> <p>“Where in any proceedings a question arises as to whether a copy of a work is an infringing copy by virtue only of subsection (3) and was lawfully made in the country, territory or area where it was made, and it is shown –”</p> <p>The way it is drafted begs the question of whether both limbs (i.e. “infringing copy” and “lawfully made”) must be in dispute before the presumptions could apply. We indicated at the meeting that we would consider the drafting of the new section 35(6A).</p>	
3.	<p><u>Clause 8 – New section 35B (imported copy not an "infringing copy" for the purposes of section 35(3))</u></p> <p>At the meeting on 15 December 2006, some Members raised concern on whether the word “acquired” in the new section 35B was clear enough to mean “come to possess physically”. There was also concern that the new section 35B(1) might be interpreted as requiring the relevant party to show the intention of the person who initially “imported” the copy of the copyright work or “acquired” it. The Administration was asked to review the drafting approach to see if it would be more appropriate to relate the proposed exemptions to the specific acts that are currently subject to civil or criminal liability. Members considered that the current approach of delineating the circumstances under which an imported copy</p>	<p>We consider that by delineating the conditions under which an imported copy is not an "infringing copy", a greater degree of certainty could be provided to the end-user of the parallel-imported copy. Having considered Members’ concerns, we agree that the word “acquired” could be replaced by “possessed”. Ultimately, it is the intention/state of mind of the person who presently possesses the parallel-imported copy that is in issue.</p> <p>Under the new section 35B(1), if a person is found to have imported or possessed a parallel-imported copy of copyright work, the purpose for which he imports or possesses the copy</p>

Item	Concerns	Response/Proposed Amendments
	<p>would not be considered as an “infringing copy” for the purposes of section 35(3) might be complicated and difficult to understand. The Administration was also asked to consult The Law Society of Hong Kong (“the Law Society”) as to whether they had any concern about the drafting of the provision.</p>	<p>would determine whether the copy is, in relation to him, an infringing copy for the purposes of section 35(3). The new section 35B(1) is not intended to impose a requirement to trace back the original intention of the person who previously imported or possessed the copy. We have revised the new section 35B to put this point beyond doubt.</p> <p>The Law Society has no objection to the revised version of the new section 35B.</p> <p>[Please see P. 9 of the marked-up copy of the Bill.]</p>
<p>4.</p>	<p><u>Clause 13 – Section 43 (performing, playing or showing work in course of activities of educational establishments)</u></p> <p>At the Bills Committee meeting on 4 January 2007, Members questioned if it was appropriate to define “near relative” in the manner as delineated under the new section 43(3), and opined that it might be more desirable to consider the scope of audience from the angle of persons who are concerned with the education of the pupils instead of merely blood relationship. Members considered such a definition too restrictive and lacking in flexibility.</p> <p>Whilst noting that the proposed amendments sought to enhance educational objectives on one hand and to safeguard the interests of copyright owners on the other, Members asked the Administration to re-consider the drafting of the new section 43(3) without losing sight of the policy objective of better meeting the needs of educational establishments,</p>	<p>Under the existing section 43 of the Copyright Ordinance, the performance, playing or showing of a copyright work before a specified composition of audience does not constitute public performance. Such specified composition of audience comprises teachers and pupils at the concerned educational establishment, and other persons directly connected with the activities of the educational establishment. To meet the educational needs nowadays including a higher level of family participation, we originally proposed to include “near relatives” in the composition of the audience and set out the intended scope of “near relatives” in the new section 43(3).</p> <p>In light of the Bills Committee’s concerns about the lack of flexibility of this approach and the practical difficulty in implementation, we now propose to make CSAs to amend</p>

Item	Concerns	Response/Proposed Amendments
	<p>including the need for a higher level of family participation in school activities.</p>	<p>section 43 so that the permitted act will apply if the target audience consists <u>wholly or mainly</u> of teachers and pupils at the educational establishment, parents or guardians of pupils at the educational establishment, and other persons directly connected with the activities of the educational establishment. The phrase “persons directly connected with the activities of the educational establishment” is adopted in the existing section 43. It refers to persons who have interest about the activities of the educational establishment, such as members of the school council. Under the existing section 43(3), parents and guardians of pupils at the educational establishment are also “persons directly connected with the activities of the educational establishment”. Under the new approach, the determining factor is whether the target audience comprises wholly or mainly of the persons mentioned above. The presence of certain individuals not belonging to the said composition would not immediately make the permitted act non-applicable. On the other hand, if an educational establishment organizes an activity which is open to all the friends and relatives of its pupils or even the general public, the educational establishment should not rely on this permitted act and should obtain prior authorization from the concerned copyright owners if public performance of copyright works is involved in the activity.</p> <p>We trust the new approach should give flexibility to educational establishments in a reasonable way when carrying out this permitted act, without at the same time expanding the scope of the permitted act excessively.</p>

Item	Concerns	Response/Proposed Amendments
		<p>Section 244 (the same permitted act for performers' rights) will be amended in the same way.</p> <p>[Please see P. 27 and 78 of the marked-up copy of the Bill.]</p>
5.	<p><u>Clause 16 - New section 54B (Legislative Council)</u></p> <p>The Administration has proposed a CSA to add a new section 54B to the Bill to provide for copyright exemption for LegCo. The Administration is requested to provide a copy of the relevant proposed CSA to The Legislative Council Commission (LegCo Commission).</p> <p>The Administration has forwarded the proposed CSA to The LegCo Commission and the Legal Adviser of the LegCo Secretariat for comments. They consider that the scope of the expanded permitted act (i.e., new section 54B) should be widened to cover the acts done by LegCo Secretariat staff or persons authorized by them for the purposes of LegCo's exercising of its powers and functions under the Basic Law. Noting that the new section 54B contains no reference to the Basic Law, the Assistant Legal Adviser has also sought clarification from the Administration as to whether the expanded permitted act covers LegCo's exercising and discharging of its powers and functions pursuant to the Basic Law as well as other applicable laws (e.g. the Legislative Council (Powers and Privileges) Ordinance (Cap. 382)).</p>	<p>We agree that the new section 54B should be widened to apply to the acts done by LegCo Secretariat staff or persons authorized by them for the purposes of LegCo's exercising and discharging of its powers and functions. Under the Legislative Council Commission Ordinance (Cap. 443), The LegCo Commission provides, through the LegCo Secretariat, administrative support and services to the LegCo. Hence, we propose that the new section 54B be revised along the following line –</p> <p style="padding-left: 40px;">Copyright is not infringed by anything done by or on behalf of the members of the Legislative Council; or The Legislative Council Commission, for the purposes of the exercise and discharge by the Legislative Council of its powers and functions.</p> <p>The new section 246B (the same permitted act for performers' rights) will be amended in the same way.</p> <p>We note that there are other statutory provisions to facilitate LegCo's exercising of its powers and functions. Hence, we consider it appropriate not to make specific reference to the Basic Law in the new section 54B. The effect would be that</p>

Item	Concerns	Response/Proposed Amendments
		<p>section 54B(1) is available for anything done by LegCo for the purpose of exercising its powers and functions pursuant to BL73 and other applicable laws. A copy of the revised CSA has been sent to The Legislative Council Commission.</p> <p>[Please see P. 30 and 80 of the marked-up copy of the Bill.]</p>
6.	<p><u>Clause 18 –New section 81A (playing of sound broadcasts inside vehicles)</u></p> <p>At the Bills Committee meeting on 11 January 2007, Mrs Selina CHOW pointed out that there were often other passengers on board the vehicle and there might be practical enforcement difficulty in determining whether the playing of the sound broadcast in question was for the purpose of affording the driver of the vehicle access to public information, or for entertaining the passengers on board. As such, Mrs CHOW suggested that the proposed provision should be drafted in a more restrictive manner so as to reflect that the playing of a sound broadcast inside the vehicle was primarily for the purpose of affording the driver of the vehicle access to public information. Mr Ronnie TONG also remarked that the reference to “private vehicles” might cause confusion that the playing of sound broadcast in a private context (such as for family members or friends inside a private car) would constitute public playing and hence would require exemption under the Copyright Ordinance. He suggested that the drafting of proposed section 81A should clearly define the scope of copyright exemption in order not to deviate from the Administration’s original policy intent.</p>	<p>We have taken on board Members’ suggestions. We will introduce a CSA to amend the new section 81A so that the permitted act will only apply to the playing of a sound broadcast inside a vehicle <u>primarily</u> for the purpose of affording the driver access to public information. The scope of “vehicle” will also be amended as “any vehicle constructed or adapted for use on roads”.</p> <p>The new section 258A (the same permitted act for performers’ rights) will be amended in the same way.</p> <p>[Please see P. 32 and 82 of the marked-up copy of the Bill.]</p>

Item	Concerns	Response/Proposed Amendments
7.	<p><u>Clause 22(3) – New section 118(2E) (exemption for legal professionals from the business end-user possession offence)</u></p> <p>At the Bills Committee meeting on 18 January 2007, Mr Ronny TONG asked whether the way the proposed section 118(2E)(a) is drafted would have the effect of exempting from the criminal offence provision under the proposed section 118(2A) those lawyers who were not permitted by the Legal Practitioners Ordinance (Cap. 159) to give advice on Hong Kong law.</p>	<p>We have reviewed the scope of legal professionals that should be covered by the new section 118(2E). We consider that legal professionals who are admitted to practise law in Hong Kong, and foreign lawyers who are qualified to practise foreign law in a place other than Hong Kong, should be exempted from the business end-user possession offence of possessing infringing copies of copyright works for the purpose of providing legal advice pertaining to the copies. We also consider that the relevant exemption should apply to pupils who assisted their masters being barristers in handling cases. We have revised the new section 118(2E) accordingly. We have sent the revised version of the new section 118(2E) to the Hong Kong Bar Association and the Law Society for comments. The Law Society has no objection to the revised version.</p> <p>[Please see P. 40 of the marked-up copy of the Bill.]</p>
8.	<p><u>Clause 24 –New section 119B(3) and (14) (offence of making for distribution or distributing infringing copies of copyright works in printed from contained in books, etc)</u></p> <p>Noting that the new section 119B(14) was an empowering provision to empower SCIT to specify the circumstances under which the new section 119B(1) would not apply, Ms Margaret NG considered that the scope of such empowering provision</p>	<p>It is our policy intent that the business end-user copying/distribution offence for printed works should combat significant infringements. Hence, only infringements exceeding a certain level will attract criminal liability under the</p>

Item	Concerns	Response/Proposed Amendments
	<p>should be clearly defined. This was to ensure that the subsidiary legislation to be made would be within scope and not ultra vires of the primary legislation. Dr YEUNG Sum shared her concern. In this connection, the Chairman requested the Administration to re-consider the drafting of the proposed empowering provisions in the light of Members' views.</p>	<p>new section 119B(1) (such infringements will still attract civil liability under the Copyright Ordinance). We will prescribe, by way of regulations under the new section 119B(14), numeric limits to define this level. We will also exclude the application of the new offence to the distribution of works via certain platforms if the application of the offence would affect users' reasonable use of copyright works (e.g. where there are no available means for users to acquire the appropriate licences to cover the distribution of the works concerned). Having considered the Bills Committee's views, we propose to introduce a CSA to define the scope of the empowering provision in the new section 119B(14).</p> <p>[Please see P. 53 of the marked-up copy of the Bill.]</p>
<p>9.</p>	<p><u>Clause 27 – Affidavit evidence (references to “has been granted with a licence of the owner” and “has not been granted with a licence of the owner”)</u></p> <p>We have explained previously to the Bills Committee that a licence under the Copyright Ordinance means no more than a permission to do an act restricted by copyright. There is no requirement that a licence be in writing or comply with other formalities. Hence, there is no difference between a permission given under an “authorization” and a permission granted under a “licence”. We have used the wording “has been granted with a licence of the owner” and “has not been granted with a licence of the owner” in the relevant provisions concerning the affidavit for facilitating the proof that a copy of a copyright work is a parallel-imported copy (i.e., section</p>	<p>We do not consider that the use of the wording “has been granted with a licence of the owner” or “has not been granted with a licence of the owner” would cause the problem suggested by the Law Society. References to licences “granted” by copyright owners have been used in many provisions of the Copyright Ordinance (e.g. sections 82, 101, 160, 166). However, in the light of the Law Society's concerns and given that the word “granted” is not used in section 118, we will revise the new section 121(2A)(c)(ii), (2B)(b), (2C)(b), (2D)(b) and (8)(b)(ii) by using “has the</p>

Item	Concerns	Response/Proposed Amendments
	<p>121(2A)(c)(ii)), as well as the affidavit for facilitating the proof of a lack of licence in the criminal proceedings under section 118 (i.e., sections 121(2B)(b), 121(2C)(b), 121(2D)(b) and 121(8)(b)(ii)).</p> <p>In our recent meeting with the Law Society, the Society was of the view that the use of the word “granted” may indicate that that the licence should be in writing and some formalities should be followed.</p>	<p>licence of the copyright owner” or “does not have the licence of the copyright owner” wherever appropriate.</p> <p>[Please see P. 56-60 of the marked-up copy of the Bill.]</p>
10.	<p><u>Clause 27 – Section 121 (references to “the owner of a copyright work” and “the owner”)</u></p> <p>In our recent meeting with the Law Society, the Society was of the view that “the owner of a copyright work” and “the owner” in Clause 27 might be interpreted as the owner of the physical copy of the copyright work, rather than the copyright owner of the work.</p>	<p>The expression “owner of the copyright work” is used in the existing section 121(1) and (2) and, when read in the context, refers to the copyright owner of the relevant copyright work. However, in order to address the Law Society’s concerns, we will revise the existing section 121(1) and (2) and the new section 121(2A), (2B), (2C) and (2D) by using “the copyright owner of a copyright work”. This expression has been used in the new sections 118(1) and (2A) and 119B(1).</p> <p>[Please see P. 54-60 of the marked-up copy of the Bill.]</p>
11.	<p><u>Clauses 31 and 32 (Licensing schemes to which sections 155 to 160 apply)</u></p> <p>Sections 154 and 161 of the Copyright Ordinance specify the licensing schemes and licences in respect of which the Copyright Tribunal has jurisdiction. Such licensing schemes</p>	<p>We will make CSAs to revise clauses 31 and 32 for the avoidance of doubt.</p>

Item	Concerns	Response/Proposed Amendments
	<p>and licences cover those relating to renting of copies of copyright works to which the rental right applies. It might not be adequately clear from sections 154 and 161 that “renting copies of the work to the public” is limited to those categories of works to which the definition of “rental right” in section 198(1) applies.</p>	<p>[Please see P. 61 of the marked-up copy of the Bill.]</p>
<p>12.</p>	<p><u>Clause 34 –Section 187 (groundless threat of proceedings in relation to parallel import)</u></p> <p>The Law Society is of the view that the term “parallel import” is not defined in the Copyright Ordinance, and does not appear in any provision except the heading of section 187. This term should be deleted from the heading to avoid confusion as to the meaning of this term.</p>	<p>The heading of a provision does not carry any legal effect. That said, we agree that improvements can be made to the heading to make it clear that “parallel import” is simply a commonly known term rather than a defined term. We will make CSA to replace the term with ‘ “parallel-imported” copies of works’. This expression is also used in the heading of section 3 of the existing Schedule 6 and section 17 of the new Schedule 7.</p> <p>[Please see P. 62 of the marked-up copy of the Bill.]</p>
<p>13.</p>	<p><u>Clause 34(C) – Requirement of signature : application in relation to body corporate</u></p> <p>The Chinese term “展覽” should be replaced with “陳列”.</p>	<p>We will add the amendment in Clause 34C.</p> <p>[Please see P. 63 of the marked-up copy of the Bill.]</p>

Item	Concerns	Response/Proposed Amendments
14.	<p><u>Clause 35 –Section 198(1) (the definition of “business”)</u></p> <p>At the Bills Committee meeting on 25 January 2007, Mrs Selina CHOW and Ms Audrey EU noted that the expression “a trade or profession” was removed from the revised definition of “business” in proposed section 198(1). However, the expression “any trade or business” was retained in relevant criminal and civil provisions of the Copyright Ordinance. Members asked the Administration to consider whether the reference to the term “trade” should be retained in the revised definition of “business” whereas the references to “trade” in the relevant criminal and civil provisions should be deleted.</p>	<p>Under the existing section 198(1), “business” (業務) is defined to include a trade or profession. The Chinese terms of “trade” and “profession” are “行業” and “專業”. When we prepared the Copyright (Amendment) Bill 2006, we considered that the meaning of the term “business” was very broad and it was quite clear that it included 行業 and 專業. On the other hand, for clarity, we saw merits in defining that “business” included business conducted otherwise than for profit.</p> <p>In the light of Members’ concerns that the proposed deletion of the reference “includes a trade or profession” from the definition of “business” may result in misinterpretation of our intention to change the coverage of the term, we now propose to add back the reference.</p> <p>It should be noted that the Chinese terms of “trade or business” in the civil and criminal provisions of the Copyright Ordinance is 貿易或業務. Hence, the meaning of “trade” in the civil and criminal provisions is not the same as that in the definition of “business”. We do not consider it appropriate to delete the term “trade” in the relevant civil and criminal provisions as this might affect the existing scope of the concerned provisions.</p> <p>[Please see P. 63 of the marked-up copy of the Bill.]</p>

Item	Concerns	Response/Proposed Amendments
15.	<p><u>Clause 35 – Section 198(1) (the definition of “specified course of study”)</u></p> <p>The amendments to section 198(1) include the insertion of a definition of “specified course of study”, which makes reference to curriculum guidelines issued by the Curriculum Development Council. At the Bills Committee meeting held on 25 January 2007, the Chairman pointed out that the Council was not a statutory body. He reminded the Administration to consider the need or otherwise of any consequential amendment to the provision, if enacted, if the Curriculum Development Council changed its name in future.</p>	<p>To accommodate the possible change of name of the Curriculum Development Council and any possible change in the mechanism for devising and issuing curriculum guidelines in the future, we have deleted the reference to the Council in the definition and replaced it with a body or authority as specified in the new Schedule 1A. The Curriculum Development Council will be set out in Schedule 1A, and the Secretary for Commerce, Industry and Technology will be empowered by the new section 198(4) to amend the Schedule by notice published in the Gazette.</p> <p>[Please see P. 64, 65 and 135 of the marked-up copy of the Bill.]</p>
16.	<p><u>Clause 35 – New section 198(3) (the definition of “lawfully made”)</u></p> <p>The Law Society is of the view that the proposed definition of “lawfully made” would cover copies which were made with the authorization of the owner of the copyright in the work in the country, territory or area where the copies were made (overseas copyright owner) even if such overseas copyright owner is different from the Hong Kong owner (i.e., the ownership is in different hands in different territories). It considers that “lawfully made” should be limited to copies made (whether in Hong Kong elsewhere) with the authorization of the Hong Kong copyright owner.</p>	<p>The expression “lawfully made” whenever it appears in the existing Copyright Ordinance, the Bill or the proposed CSAs, is followed by the words “in the country, territory or area where it was made”. The reference has to be read as a whole. This reference is used to refer to a parallel-imported copy which is an infringing copy by virtue only of section 35(3) of the Copyright Ordinance. As section 35(3) also covers “pirated copy” made aboard, we use the reference “which was lawfully made in the country, territory or area where it was made” to</p>

Item	Concerns	Response/Proposed Amendments
		<p>state clearly that the concerned context relates to parallel importation.</p> <p>For cases where the copyright is in different hands in different territories as raised by the Law Society, so long as the copy was made with the authorization of the overseas copyright owner in the territory where the copy was made, it should be regarded as “lawfully made” in the parallel importation context. In other words, those copies should be parallel-imported copies rather than pirated copies. This interpretation reflects our intention all along. Indeed, we have responded to similar concerns in previous legislative exercises to amend the Copyright Ordinance (paper no. CB(1)191/03-04(01) as at 23.2.2004). The proposed CSA aims to put our interpretation beyond doubt.</p> <p>We have sounded out copyright owners in various industries to ascertain if it is common for copyright ownership of a certain work to be in different hands in different territories. According to our understanding, this practice of split ownership in different geographical locations is rare. The industries mainly rely on licensing arrangements rather than assignments of ownership to handle their copyright works.</p>

Item	Concerns	Response/Proposed Amendments
17.	<p><u>Clause 37 – Section 200 (Meaning of artistic work)</u></p> <p>Section 200(2) is amended by including the performance of “artistic works” under the meaning of performance. It is noted that “artistic work” should have the same meaning as that defined in section 5.</p>	<p>We will delete the words “which includes every production in the artistic domain, whatever may be the mode or form of its expression” in section 200(2)(ca). The definition section in section 238(1) will also be extended to cover “artistic work”.</p> <p>[Please see P. 66 and 75 of the marked-up copy of the Bill.]</p>
18.	<p><u>Clause 51 – Section 272E(2)(a) (Right to object to derogatory treatment)</u></p> <p>Section 272E(2)(a) should not impose liability on a person who transmits a derogatory performance live or causes a derogatory performance to be heard in public where he did not play any part in subjecting the performance to the derogatory treatment.</p>	<p>We will make a CSA to revise section 272E(2)(a) along the following line –</p> <p>“The right is infringed by a person who does any of the following acts –</p> <p>(a) in relation to a live aural performance, subjects the performance, or causes the performance to be subjected, to derogatory treatment, when the performance is caused to be heard in public, broadcasted, included in a cable programme service or made available to the public live; ...”</p> <p>[Please see P. 89 of the marked-up copy of the Bill.]</p>

Item	Concerns	Response/Proposed Amendments
19.	<p><u>Clause 55 –New section 273(1)(c) (Interpretation of sections 273 to 273H)</u></p> <p>In addition to copyright owners, two other types of persons may also use effective technological measures to control the use of copyright works. They are (i) the exclusive licensees and (ii) those persons who, pursuant to the authority of the copyright owner, issue to the public copies of a copyright work, make available to the public copies of a copyright work, broadcast a work, or include the work in a cable programme service. We propose to make amendments to section 273(1) to reflect this intention.</p> <p>In the relevant amendments as set out in LC Paper No. CB(1)871/06-07(01), we have used the wording “with the authority of the copyright owner of the copyright work” in section 273(1)(c) to refer to the acts of distribution by the persons in (ii) above. In our recent meeting with the Law Society, the Society expressed concerns as to whether there should be consistency on the use of “with the licence of the copyright owner” or “with the authority of the copyright owner” throughout the Bill.</p>	<p>We agree that for contexts where copyright owners authorize other parties to use their copyright works (i.e., the use may amount to copyright infringement without the authorization), we should adopt “with the licence of the copyright owner” for consistency. Hence, we will amend sections 273(1)(c), 273A(1)(c) and 273B(3)(c), replacing “with the authority of the copyright owner of the copyright work” by “with the licence of the copyright owner of the copyright work”.</p> <p>For the references “without the authority of the copyright owner” in section 273(1)(a), “without the authority of the exclusive licensee” in section 273(1)(b) and “without the authority of that other person” in section 273(1)(c), we consider them appropriate as the contexts do not relate to authorization to do acts restricted by copyright, but authorization to circumvent the technological protection measure.</p> <p>[Please see P. 100, 102 and 105 of the marked-up copy of the Bill.]</p>
20.	<p><u>Clause 55 –New section 273F(12) and (12A) (Exception to the anti-circumvention provisions for private time-shifting purposes)</u></p> <p>The broadcasting industry objects strongly to the proposed sections 273F(12) and (12A). According to the industry, it has become common for the same technological measure to be</p>	<p>Having discussed with the industry concerned and considered the existing industry practice which already provides for appropriate arrangements to allow private time-shifting</p>

Item	Concerns	Response/Proposed Amendments
	<p>used in relation to copyright works delivered over different media platforms due to technological convergence and the interoperability of different technologies. The industry also points out that technological measures could have been applied by the content providers. Therefore, it would be unlikely for a particular set of technological measure to be used only in relation to video-on-demand services. The industry further submits that no similar exception on private time-shifting could be found in the copyright legislation of other countries. Instead, this issue is dealt with through broadcasting regulatory measures or by a mechanism to provide exception as and when problems arise. The Administration has been assured at its meetings with the broadcasters that the broadcasting industry generally appreciates users' legitimate interests in recording broadcast and cable programmes for private time-shifting purposes.</p>	<p>activities, we propose to make a CSA to delete the new section 273F(12) from the Bill rather than introducing the new section 273F(12A).</p> <p>[Please see P. 129 of the marked-up copy of the Bill.]</p>
21.	<p><u>Clause 57 – Section 274 (Rights and remedies in respect of unlawful acts to interfere with rights management information)</u></p> <p>In line with the international practice, we will amend the existing section 274 so that a person interfering with rights management information (RMI) will not be civilly liable unless he or she knows or has reason to believe that this will lead to copyright infringement. This condition is stipulated in the new section 274(2A) for circumstances where the person providing RMI could seek civil remedies against the person tempering with the RMI. The new section 274(2B) provides that copyright owners and their exclusive licensees</p>	<p>We will make a CSA to amend the new section 274(2B) so that a copyright owner and his exclusive licensee may seek civil remedies against the person tampering with the RMI only if that person knows or has reason to believe that the tampering will lead to copyright infringement. We will also take the opportunity to clarify that the copyright owner referred to in section 274(2B) is the copyright owner of a work to which the RMI is attached.</p>

Item	Concerns	Response/Proposed Amendments
	<p>may also seek civil remedies against the person tampering with the RMI.</p> <p>However, it is not specifically provided in section 274(2B) that the rights of the copyright owner and his exclusive licensee are similarly subject to the requirement that the person tampering with the RMI knows or has reason to believe that the tampering will lead to copyright infringement.</p>	<p>[Please see P. 131 of the marked-up copy of the Bill.]</p>
22.	<p><u>Clause 61 (Section 5 of the new Schedule 7) - savings for existing stocks in relation to rental right for film</u></p> <p>Under section 5(1) of the new Schedule 7, any new right arising by virtue of section 4 of the 2006 Amendment Ordinance (insofar as it related to section 25(1)(c) of the Copyright Ordinance) did not apply to a copy of a film acquired by a person before the commencement date of that section for the purpose of renting it to the public. At the Bills Committee meeting on 1 March 2007, Mrs Selina CHOW expressed the view that it would be difficult for copyright owners to distinguish between stocks acquired before and after the commencement date, in particular where classic films were concerned. She asked who would bear the burden of proof in respect of “existing stocks” and how the onus of proof could be discharged.</p>	<p>The onus of proving the applicability of the savings provision i.e. that the stocks in question were acquired before the commencement date lies with the defendant, rather than the plaintiff. In practice, where the defendant adduces evidence as to the date of acquisition and the plaintiff does not adduce any further evidence to rebut, it may be open for the court to find on a balance of probabilities that the date of acquisition was as the defendant alleges. If the plaintiff adduces evidence to the contrary, the court would do a weighing exercise as to which version is the one more probable and to be believed in.</p> <p>Ultimately, whether the copies of the film in question would constitute existing stocks would need to be determined on the facts of individual cases. The saving provision does not impose any legal obligation on copyright owners to prove that the copies concerned are not existing stocks.</p>

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		<p>We have explained to the copyright owners concerned the needs for such a saving provision. Indeed, a similar saving provision is also found in the UK copyright law when rental right was introduced. We do not propose making amendments to this saving provision.</p>
23.	<p><u>Clause 61 (Section 16(3) of the new Schedule 7) – Transitional provisions and savings in relation to amendments effected by section 8 of the 2006 Amendment Ordinance</u></p> <p>Section 16(3) of the new Schedule 7 aims to state that the liberalization of parallel imports under the new section 35B of the Ordinance does not relieve any person from liability to civil action in respect of his act that occurred before the commencement date of the new section 35B.</p> <p>Section 16(3) however does not directly state so.</p>	<p>We will move a CSA amending section 16(3) of the new Schedule 7 to state that the liberalization of parallel imports under the new section 35B of the Ordinance does not relieve any person from liability to civil action in respect of his act that occurred before the commencement date of the new section 35B. We will also revise section 20 of the new Schedule 7 for the same reason.</p> <p>[Please see P. 145 of the marked-up copy of the Bill.]</p>