

For information on
19 February 2008

Legislative Council Panel on Commerce and Industry

Rental Rights for Films

Introduction

This paper gives the historical background to the introduction of rental rights for films under the Copyright Ordinance (Cap. 528). It also sets out the Administration's response to a number of issues raised by the Alliance of the Rental Industry (電影租賃業大聯盟 "the Alliance") in its representations to the Legislative Council.

Copyright (Amendment) Ordinance 2007

2. In 2004, the Administration published the Consultation Document on "Review of Certain Provisions of Copyright Ordinance" to seek the community's views on various issues including the introduction of rental rights for films. During the consultation, the film industry pointed out that the proliferation of rental activities relating to video discs had substantively affected the income of copyright owners (including income from both theatrical release of films and sale of DVDs and VCDs), thereby impairing their interests. On the other hand, some video rental shop operators were concerned that the charge of licence fees by copyright owners would result in increased cost and affect the operation of the rental shops.

3. The above divergent views were taken fully into account in subsequent deliberations. On balance, it was considered that rental rights for films should be introduced as part of the measures to provide an environment conducive to the sustained healthy development of creative industries in Hong Kong. In order to minimise the possible adverse impact on the operation of rental shops, we have brought in the following mitigating measures: (a) putting on hold the commencement of the relevant provision (i.e. the provision will not take effect upon the enactment of the legislation) so that copyright owners and the rental shops will have sufficient time to work out a rental licensing scheme for films; and (b) introducing a saving provision¹ to relieve possible hardship

¹ In other words, upon the coming into effect of the relevant provision, rental shops could continue to rent out the retail versions of video discs that were acquired before the commencement date (i.e. the existing stock). Only rental activities relating to video discs acquired on or after the commencement date are subject to authorisation by copyright owners.

caused to the rental shops that have acquired stocks of films for commercial rental purposes prior to the commencement of the amended provision. The Amendment Ordinance also empowers the Copyright Tribunal to deal with and arbitrate in disputes and matters pertaining to the rental licensing scheme for films.

The Concerns of the Alliance and the Latest Development on the Drawing up of the Licensing Scheme

4. The issues raised by the Alliance in its representations to the Legislative Council are related mainly to the terms and details of the rental licensing scheme proposed by the Hong Kong Video Development Foundation Ltd (“HKVDF”)², such as the price and types of the rental version of video discs made available. Rental licensing is a commercial act. To avoid interfering with the free operation of the market, the Administration considers it inappropriate to get involved in working out the details of the rental licensing scheme.

5. The Alliance also alleged that the copyright owners had not consulted the rental shops and the consumers sufficiently on the licensing scheme. Since the enactment of the Amendment Ordinance in mid-2007, the Administration has actively encouraged the copyright owners to work out with the rental shop operators early a mutually acceptable rental licensing scheme, so that the rental shops could carry on with their business in a lawful manner upon commencement of the relevant provision whilst copyright owners could obtain a reasonable return. It is noted that the major groups of copyright owners for films have started to work out the rental licensing arrangements since mid-2007. A mail was sent to all known rental shops to brief them on the content of the proposed rental licensing scheme, and two briefing sessions were held in August and December 2007 for presenting the proposed rental licensing scheme to the rental shop operators. Having regard to the views received during the briefing sessions, HKVDF has made a number of amendments to its proposed scheme. These include lowering the price ceiling for rental version of video discs to 200% of the retail version, as opposed to 300% as originally proposed.

6. To help maintain positive dialogue and narrow the differences between copyright owners and the Alliance, the Administration arranged a meeting for the representatives of the Alliance, HKVDF and the Consumer

² HKVDF is a non-profit making organization representing major video distribution companies in Hong Kong.

Council on 31 January 2008. Through constructive discussions, progress had been made regarding several issues surrounding the licensing scheme. The two sides also agreed to put forth or exchange further information and statistics to facilitate the next stage of discussion.

7. At the time of finalising this note, the engagement process between the two sides is still on-going. At the Panel meeting on 19 February 2008, we will brief Members on the latest state of play.

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Commerce and Economic Development Bureau
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