

# 立法會 *Legislative Council*

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## **Background brief on the Copyright (Amendment) Bill 2009**

### **Purpose**

This paper sets out the background to the Administration's proposal to amend the Copyright Ordinance (Cap. 528) (the Ordinance) to provide for the circumstances in which section 119B(1) of the Ordinance (the copying and distribution offence) does not apply. It also provides a summary of views and concerns expressed by the Panel on Commerce and Industry (the Panel).

### **Background**

2. To implement various proposals to enhance copyright protection and to make the copyright exemption regime more flexible, the Administration introduced the Copyright (Amendment) Bill 2006 into the Legislative Council (LegCo) on 29 March 2006. Following scrutiny by a Bills Committee, the Copyright (Amendment) Ordinance 2007 (CAO 2007) was passed by the LegCo on 27 June 2007. It provides new civil and criminal liability to enhance copyright protection (including the new business end-user copying/distribution criminal liability for four types of printed works<sup>1</sup> as well as civil and criminal liability against activities relating to circumvention of technological measures used for copyright protection). The CAO 2007 also relaxes the restrictions on parallel importation of copyright works, and strengthens enforcement of rights.

3. Certain provisions (notably those relating to copyright exemptions and liberalization of parallel imports) came into force upon the enactment of the CAO 2007. The provisions related to moral and related rights for performers of aural performances and for underlying works in sound recordings, new criminal and civil liability in relation to the making of and dealing in circumvention devices, rental rights for films, and rights management information came into effect on 25 April 2008 following negative vetting by the Legislative Council. Those provisions related to the act of circumvention and the liability of directors or partners in

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<sup>1</sup> They are books, magazines, periodicals and newspapers.

relation to possession offence of business end-user came into effect on 11 July 2008. The remaining provisions which have not yet commenced operation include the business end-user copying and distribution offence and rental rights for comics.

## **The Bill**

4. Under section 119B(1) (which has not yet commenced operation) of the Ordinance, as added by section 33 of the CAO 2007, a person commits an offence if he, for the purpose of or in the course of any trade or business and on a regular or frequent basis, without the licence of the copyright owner, makes for distribution or distributes an infringing copy of a copyright work in a printed form contained in a book, a magazine, a periodical or a newspaper resulting in a financial loss to the copyright owner (the copying and distribution offence). The Secretary for Commerce and Economic Development (SCED) is empowered to prescribe by regulation numeric limits within which the copying and distribution offence does not apply.

5. The proposed numeric limits that have been agreed between the Administration and the stakeholders after extensive consultation are as follows:-

- (a) for newspapers, magazines and periodicals (excluding specified journals), a maximum of 500 A4-size pages embodying infringing copies of copyright works within any 14-day period; and
- (b) for books and specified journals, a maximum total retail value of \$6,000 within any 180-day period where the value of a book, an issue of a specified journal, or the whole of an article in an issue of a specified journal, would be counted towards the total retail value respectively when the user makes for distribution or distributes infringing copies of more than 25% of the number of pages of the book, or the issue of the specified journal, or makes for distribution or distributes a complete copy of the article in the specified journal (even if it is not more than 25% of the pages of the issue of the specified journal).

6. When working on the draft regulation, the Administration was of the view that the above formulation of numeric limits might be inconsistent with the enabling provisions in sections 119B(3)(a), (19) and (20) of the Ordinance. For instance, the enabling provisions require that the numeric limits applicable to each type of copyright work should refer to both the number and the value of infringing copies, and the enabling provisions draw no distinction between copyright work contained in different types of printed work. Therefore, the Administration proposes to amend section 119B of the Ordinance and also to prescribe the numeric limits in a new schedule to the Ordinance.

7. The main provisions of the Copyright (Amendment) Bill 2009 (the Bill) are set out as follows:

- (a) Clause 1 provides for the short title of the Bill when enacted;
- (b) Clause 2 provides for the commencement of the Bill when enacted;
- (c) Clause 3 amends section 119B of the Ordinance, as added by section 33 of the CAO 2007, to provide that section 119B(1) of the Ordinance does not apply in the circumstances described in the new Schedules 1AA and 1AB to the Ordinance; and
- (d) Clause 4 adds the new Schedules 1AA and 1AB to the Ordinance to provide for the circumstances in which section 119B(1) of the Ordinance does not apply.

### **Discussion by the Panel on Commerce and Industry**

8. Issues relating to rental rights for films and comics, publicity and public education activities which had been launched for the commencement of the CAO 2007 were discussed by the Panel in 2008. At the Panel meeting held on 19 February 2008, the Administration briefed members on, inter alia, the proposed numeric limits within which the copying and distribution offence would not apply. At another meeting held on 16 December 2008, members were briefed on the refined proposals in relation to the copying and distribution offence under section 119B of the Ordinance. The Panel supported in principle the proposed amendments to section 119B of the Ordinance, the revised formulations of the numeric limits, and the proposal for the numeric limits to be prescribed as a schedule to the principal legislation.

9. While supporting the proposed numeric limits which would be conducive to the development of the creative industry in Hong Kong, Panel members urged the Administration to review the propriety of the thresholds vigorously from time to time, so as to ensure that a reasonable balance was maintained between protecting the interests of copyright owners and minimizing the hardship of copyright users, taking into account changes in circumstances.

10. Regarding the adoption of the threshold of a maximum of 500 A4 pages, members expressed concern about the method to be used to count the number of pages as it was possible to magnify or reduce the size of the copies with a photocopying machine. According to the Administration, the industry's view was that whenever there was a reduction in size, the size of the original article would be used when considering whether the threshold had been met. The legislative intent would be reflected in the Bill.

11. Some Panel members opined that appropriate licensing scheme(s) that covered the making or distribution of copies of copyright work(s) and printed work(s) should be made available and put in place prior to the commencement of the provisions. The new provisions should be widely publicized so that the risk of inadvertent breaches would be minimized. The Administration advised that the copying and distribution offence provision and the related criminal liabilities would come into operation only after a reasonable period to allow for preparatory work by stakeholders in the relevant sectors and for suitable publicity and public education programmes.

12. Some Panel members noted that the industry was supportive of the proposed simplification which would make the relevant numeric limits more easily comprehensible to business end-users, and that there was a suggestion to lower the 25% threshold to 20%. The Administration advised that after consultation with the industry and careful consideration, pitching the threshold at 25% would better serve the purpose of striking a reasonable balance between the interests of copyright owners and business end-users.

### **Relevant papers**

Information paper provided by the Administration for the Commerce and Industry Panel meeting on 19 February 2008

<http://www.legco.gov.hk/yr07-08/english/panels/ci/papers/ci0219cb1-803-3-e.pdf>

Minutes of Commerce and Industry Panel meeting on 19 February 2008

<http://www.legco.gov.hk/yr07-08/english/panels/ci/minutes/ci080219.pdf>

Information paper provided by the Administration for the Commerce and Industry Panel meeting on 16 December 2008

<http://www.legco.gov.hk/yr08-09/english/panels/ci/papers/ci1216cb1-383-4-e.pdf>

Background brief prepared by the Legislative Council Secretariat for the Commerce and Industry Panel meeting on 16 December 2008

<http://www.legco.gov.hk/yr08-09/english/panels/ci/papers/ci1216cb1-383-5-e.pdf>

Minutes of Commerce and Industry Panel meeting on 16 December 2008

<http://www.legco.gov.hk/yr08-09/english/panels/ci/minutes/ci20081216.pdf>