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**Panel on Commerce and Industry**

**Meeting on 16 December 2008**

**Background brief on  
Follow-up to the Copyright (Amendment) Ordinance 2007**

**Purpose**

This paper sets out the progress of follow-up to the Copyright (Amendment) Ordinance 2007 (the Amendment Ordinance), and provides a summary of views and concerns expressed by the Panel on Commerce and Industry (the Panel).

**Background**

2. The Amendment Ordinance was passed by the Legislative Council 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 Amendment Ordinance makes Hong Kong's copyright exemption regime more flexible, 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 Amendment Ordinance. The remaining provisions (notably the new liabilities) will come into operation by phases to allow time for suitable publicity and public education programmes to be rolled out, and for stakeholders in the relevant sectors to get prepared.

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

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

4. At the Panel meeting on 19 February 2008, the Administration briefed members on the publicity and public education activities which had been launched for the commencement of the Amendment Ordinance. The Administration also presented for members' consideration the proposed commencement timetable for provisions which were yet to come into operation.

5. On the business end-user copying/distribution offence regarding printed works and the related liability of directors/partners, the Panel noted that the Administration had discussed with stakeholders the proposed "safe harbour" regulation (i.e. a set of numeric limits within which the copying and distribution offence did not apply) with a view to prescribing before the regulation came into operation by way of subsidiary legislation. The following were proposed under the "safe harbour" regulation:

- (a) for newspapers, magazines and periodicals (excluding academic journals), a maximum of 500 A4 pages infringing copies for any 14-day period would be adopted;
- (b) for books (including academic journals), a maximum total retail value of \$6,000 within any 180-day period, where the retail value of books would be counted towards the total value when the user made for distribution or distributed more than 15% of the number of pages of a book on each occasion or for use on one occasion; or more than 40% of the number of pages of the book cumulatively; or complete article(s) in academic journals on one occasion or for use on one occasion, would be adopted.

6. Members generally supported the proposed "safe harbour" regulation which would be conducive to the development of the creative industry in Hong Kong. Members urged the Administration to review the propriety of the thresholds vigorously from time to time to ensure that a reasonable balance was maintained between protecting the interests of copyright owners and minimizing the hardship of copyright users, having regard to changes in circumstances.

7. Regarding the adoption of the threshold of a maximum of 500 A4 pages, members pointed out that it was possible to magnify or reduce the size of the copies with a photocopying machine. As such, they expressed concern about the method to be used to count the number of pages. The Administration advised that the industry had been consulted on the matter. It was the accepted view 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 "safe harbour" regulation.

8. The Panel also supported in principle the Administration's other proposals, in particular the proposed commencement timetable for the provisions under the Amendment Ordinance which had yet to come into operation.

### **Recent developments**

9. 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. As regards the provisions related to the act of circumvention and the liability of directors or partners in relation to "possession offence" of business end-user, they came into effect on 11 July 2008.

### **Latest position**

10. The Administration will brief members on its refined proposals for the "safe harbour" regulation and the latest state of play in respect of the rental rights for comics.

### **Relevant papers**

Information papers 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 the Commerce and Industry Panel meeting on 19 February 2008

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

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