

立法會
Legislative Council

LC Paper No. CB(1)1418/13-14
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by the Administration)

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Panel on Commerce and Industry

Minutes of meeting
held on Tuesday, 18 March 2014, at 2:30 pm
in Conference Room 3 of the Legislative Council Complex

Members present : Hon Vincent FANG Kang, SBS, JP (Chairman)
Dr Hon CHIANG Lai-wan, JP (Deputy Chairman)
Hon Emily LAU Wai-hing, JP
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Ting-kwong, SBS, JP
Dr Hon LAM Tai-fai, SBS, JP
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK
Hon Dennis KWOK
Hon SIN Chung-kai, SBS, JP
Hon Martin LIAO Cheung-kong, JP
Ir Dr Hon LO Wai-kwok, BBS, MH, JP
Hon CHUNG Kwok-pan

Members attending : Hon Claudia MO
Hon Gary FAN Kwok-wai
Hon CHAN Chi-chuen

Public officers attending : Agenda item V
Mr Andrew H Y WONG, JP
Permanent Secretary for Commerce and Economic
Development (Commerce, Industry and Tourism)

Ms Carol YUEN, JP
Deputy Secretary for Commerce and Economic
Development (Commerce and Industry) 1

Mr Simon GALPIN
Director-General of Investment Promotion

Miss Victoria TANG
Associate Director-General of Investment
Promotion (3)

Agenda item VI

Mr Andrew H Y WONG, JP
Permanent Secretary for Commerce and Economic
Development (Commerce, Industry and Tourism)

Mr David F L WONG, JP
Deputy Secretary for Commerce and Economic
Development (Commerce and Industry) 2

Miss Patricia SO
Principal Assistant Secretary for Commerce and
Economic Development (Commerce and Industry)3

Ms Michelle CHONG
Assistant Director of Intellectual Property
(Copyright)

Agenda Item VII

Miss Janet WONG, JP
Commissioner for Innovation and Technology

Mr Johann WONG, JP
Deputy Commissioner for Innovation and
Technology

Prof Yue On Ching
Science Advisor
Innovation and Technology Commission

Mr Thomas TSANG
Assistant Director of Intellectual Property
(Patents)

Clerk in attendance : Ms Annette LAM
Chief Council Secretary (1)3

Staff in attendance : Ms Connie HO
Senior Council Secretary (1)3

Miss Tiffany NG
Research Officer 7

Miss Rita YUNG
Council Secretary (1)3

Ms May LEUNG
Legislative Assistant (1)3

Action

I. Confirmation of minutes of meeting

(LC Paper No. CB(1)1070/13-14 -- Minutes of meeting held on
21 January 2014)

The minutes of the meeting held on 21 January 2014 were confirmed.

II. Information papers issued since last meeting

(LC Paper Nos. CB(1)994/13-14(01) -- Submission dated 21
and CB(1)1049/13-14(01) February 2014 from the
Beauty Industry Reform
Research and Development
Committee on the regulation
and professionalization of
the beauty industry and the
Administration's reply letter
dated 6 March 2014

LC Paper No. CB(1)1062/13-14(01) -- Information paper on
proposed amendments to the
Schedules to the Patents
Ordinance (Cap. 514),
Registered Designs
Ordinance (Cap. 522), Trade
Marks Ordinance (Cap. 559)
and Layout-design
(Topography) of Integrated
Circuits (Designation of

Qualifying Countries,
Territories or Areas)
Regulation (Cap. 445B)

LC Paper No. CB(1)1092/13-14(01) -- Administration's paper on United Nations Sanctions (Liberia) Regulation 2014 and United Nations Sanctions (Liberia) Regulation 2013 (Repeal) Regulation)

2. The Chairman informed members that the above papers had been issued since the last meeting. He added that LC Paper No. CB(1)1062/13-14(01) was about the technical amendments proposed by the Administration to the Schedules to the Patents Ordinance (Cap. 514), Registered Designs Ordinance (Cap. 522), Trade Marks Ordinance (Cap. 559) and Layout-design (Topography) of Integrated Circuits (Designation of Qualifying Countries, Territories or Areas) Regulation (Cap. 445B). These amendments sought to update the relevant schedules setting out the list of contracting parties to the Paris Convention for the Protection of Industrial Property and the membership list of the World Trade Organization. The Administration planned to table the four pieces of subsidiary legislation at the Legislative Council ("LegCo") for negative vetting by mid 2014.

III. Date of next meeting and items for discussion

(LC Paper No. CB(1)1072/13-14(01) -- List of outstanding items for discussion

LC Paper No. CB(1)1072/13-14(02) -- List of follow-up actions)

3. Members noted that the next regular Panel meeting would be held on 15 April 2014 at 2:30 pm to discuss the following items proposed by the Administration:

- (a) Progress report on the implementation of the Dedicated Fund on Branding, Upgrading and Domestic Sales; and
- (b) Implementation of the recommendations of the Task Force on Manpower Development of the Retail Industry

(Post-meeting note: At the request of the Administration and with the concurrence of the Panel Chairman, the item "Proposal to establish the Innovation and Technology Bureau" was included in the agenda for the meeting to be held on 15 April 2014. Members were notified of the revised agenda vide LC Paper No. CB(1)1236/13-14 issued on 9 April 2014.)

IV. Matters arising

Consideration of an overseas duty visit

(LC Paper No. IN13/13-14 -- Paper on innovation and technology industry and intellectual property system in Israel prepared by the Legislative Council Secretariat (information note)

Relevant paper

LC Paper No. IN04/13-14 -- Paper on innovation and technology industry in South Korea, Israel and Belgium prepared by the Legislative Council Secretariat (information note))

4. At the invitation of the Chairman, Research Officer 7 briefed members on the innovation and technology industry and intellectual property system in Israel, as set out in the information note prepared by the Research Office of the Secretariat (LC Paper No. IN13/13-14).

5. Mr Charles MOK and Ir Dr LO Wai-kwok noted that while Israel was a small county with a population size comparable to that of Hong Kong, it had developed into a world-recognized high-tech and innovation hub. Mr MOK and Ir Dr LO opined that it would be worthwhile to conduct a duty visit to Israel to obtain first-hand information on the relevant policies, initiatives and legislations in promoting industrial research and development (R&D) and the development of innovation and technology. In particular, members were interested in measures to encourage and facilitate local and foreign investment in innovation and technology, to attract multinational companies to set up R&D centres, to foster technology transfer from academia to industry and to grow venture capital industry in Israel.

Concurring with Mr Charles MOK and Ir Dr LO Wai-kwok, Ms Emily LAU considered it opportune to study the Israeli Government's experience in striking the balance between providing incentives to encourage private sector investment in innovation and technology while avoiding the transfer of benefits to certain private companies.

6. Mr Jeffrey LAM opined that the development of R&D and innovation and technology would help upgrade and develop the industrial sector, thereby generating more quality jobs for the local workforce. Mr LAM supported a duty visit to Israel, saying that some Hong Kong enterprises with R&D operations in Israel had given positive feedback on Israel's innovation and technology development.

7. Mr CHUNG Kwok-pan expressed concern about the security and safety arrangements for the duty visit in view of the political tension between Israel and Palestine.

8. The Chairman concluded that members generally supported the proposal to conduct a duty visit to Israel to study the Israeli Government's experience in promoting R&D and innovation and technology as well as in nurturing talents for the sustained development of innovation and technology. He advised that the Consul General of Israel in Hong Kong Special Administrative Region (HKSAR) and Macau SAR had suggested the Panel to visit the Knesset (the Israeli Parliament) at the same time. Noting that the Knesset would be in session during 11 May 2014 and 3 August 2014, members suggested that the weeks of 21 or 28 July 2014 could be a suitable time for the duty visit. Members also agreed to meet and exchange views with the relevant parties involved in the formulation, implementation and monitoring of related policies in Israel as well as relevant non-governmental agencies and technology transfer companies/offices of the leading universities. The Chairman said that he would seek the advice of the Consul General of Israel in HKSAR and Macau SAR on the appropriate timing of the visit, visit programme, as well as members' concern about security and safety arrangements. An informal meeting would be arranged after more information on the proposed visit was prepared for members' consideration.

(Post-meeting note: A close-door meeting with the Consul General of Israel in HKSAR and Macau SAR was held on 17 April 2014 at 9:30 am to discuss the proposed duty visit to Israel.)

V. Promotion of inward investment

(LC Paper No. CB(1)1072/13-14(03) -- Administration's paper on promotion of inward investment

LC Paper No. CB(1)1072/13-14(04) -- Paper on promotion of inward investment prepared by the Legislative Council Secretariat (updated background brief)

Presentation by the Administration

9. At the invitation of the Chairman, Permanent Secretary for Commerce and Economic Development (Commerce, Industry and Tourism) (PSCIT) and Director-General of Investment Promotion (DGIP) briefed members on the investment promotion work and major achievements of Invest Hong Kong (InvestHK) in 2013 as well as the way forward for 2014 as set out in the Administration's paper (LC Paper No. CB(1)1072/13-14(03)).

Discussion

Strategies on promoting inward investment

10. Pointing out that the Singaporean Government had adopted a relatively more aggressive strategy in attracting inward investment, Mr Jeffrey LAM enquired how did Hong Kong fare compared with Singapore in this regard. Mr LAM also asked whether the Administration would consider providing tax concession and other incentives for overseas investors who invested in Hong Kong's Innovation and Technology (I&T) industry, a practice widely adopted by overseas countries to attract more quality companies to set up their businesses locally, thereby creating more job opportunities.

11. Ms Emily LAU was of the view that the Administration should devise an open and fair mechanism that could provide sufficient incentives for potential investors to invest in Hong Kong's I&T industry while avoiding transfer of benefits to any specific private companies. She was concerned that Hong Kong would lose out to its competitors should the Administration remain conservative in this regard.

12. PSCIT responded that InvestHK had been promoting the Innovation and Technology Fund and the Research and Development Cash Rebate Scheme, as well as the various funding schemes under the CreativeSmart

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Initiative to overseas companies to attract foreign investment to the I&T and creative industries. The Administration would review the policies in promoting foreign direct investment from time to time in the light of prevailing circumstances. On the comparison between Singapore and Hong Kong on their strategies in terms of promoting inward investment, DGIP advised that while the Singaporean Government had provided customised tax incentives for individual companies, Hong Kong had all along attached great importance to providing a level playing field for all companies interested in investing in Hong Kong. The rule of law and a relatively simple and low tax regime were the fundamental strengths of Hong Kong. Being part of the People's Republic of China and positioned at the heart of Asia, Hong Kong also enjoyed the geographic advantage of being a two-way platform for business between Mainland China and the rest of the world. All these made Hong Kong an attractive business destination for international companies to base their Asian operations. At the request of Ms Emily LAU, the Administration undertook to provide comparative information on the policies on attracting foreign investments adopted by the Hong Kong Government and its major trade partners or neighbouring cities for members' reference.

13. Mr Jeffrey LAM enquired how the Administration could address overseas companies' concern about the rising business operation costs due to the increased cost in acquiring office accommodation as a result of the demand-side management measure implemented by the Administration to increase the ad valorem stamp duty rates for residential and non-residential properties. DGIP advised that InvestHK had explained to overseas start-ups as well as small and medium size enterprises that Hong Kong offered a wide range of office accommodation options at different prices levels. He said that the cost of office accommodation might not be a major consideration of overseas companies in deciding whether or not to set up their business in Hong Kong as long as their business could thrive here.

14. Mr CHUNG Kwok-pan enquired about the Administration's initiatives on supporting overseas start-up entrepreneurs to set up their business in Hong Kong. He also enquired about the support for local young entrepreneurs who aspired to set up their own business. DGIP advised that there had been remarkable growth in business start-ups in Hong Kong. The number of investor visa applications submitted by entrepreneurs and the case load of InvestHK in respect of companies involved in entrepreneur-led business had increased by 60% and 59% respectively since 2010. Meanwhile, the number of co-work spaces and incubators operated in both the private and the public sectors had increased from three in 2010 to 24 as of today. InvestHK had introduced to overseas start-ups various support services provided by the public sector, such as the incubation programmes

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operated by the Hong Kong Science and Technology Parks Corporation and the Cyberport, as well as the private sector initiatives including the co-work spaces or incubators operated by entrepreneurs to support the start-up ecosystem. At the request of Mr CHUNG Kwok-pan, the Administration would provide for members' reference a list of co-work spaces or incubators operating in Hong Kong.

15. On the assistance rendered to local start-up entrepreneurs, PSCIT advised that to cater for innovation and technology start-ups in particular, the Office of the Government Chief Information Officer would soon launch an interactive portal to pool stakeholders in the start-up ecosystem to promote inventions and innovations and to attract funding. DGIP added that InvestHK's initiatives to support start-ups, such as the Venture Programme under the "StartmeupHK" initiative that rolled out in July 2013, were opened to both overseas and local start-up entrepreneurs.

16. Pointing out that one of Hong Kong's strengths lay in its testing and certification services, Dr CHIANG Lai-wan advised that InvestHK should focus more on attracting foreign investment to the pharmaceutical science industry in its future work plan. Dr CHIANG suggested that the Administration should, riding on Hong Kong's advantages on testing and certification services, attract overseas pharmaceutical manufacturers to produce and manufacture pharmaceutical products in Hong Kong to access the vast mainland market. Priority should also be given to attracting Mainland pharmaceutical companies to set up manufacturing or processing operations in Hong Kong, and to have their pharmaceutical products produced and tested in Hong Kong for export to various overseas markets.

17. PSCIT advised that Hong Kong testing organizations had been allowed to provide testing services for various Mainland products pursuant to the liberalization measures implemented under the Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA). On attracting companies to set up operations in Hong Kong, he said that apart from financial services, innovation and technology and the creative industries, InvestHK had also been targeting companies in other industries, including the pharmaceutical industries. InvestHK would continue to promote CEPA and Hong Kong's strength in testing and certification services so as to attract overseas and Mainland pharmaceutical companies to set up operations in Hong Kong.

Aftercare support services

18. Pointing out that the financial services, innovation and technology and the creative industries sectors were facing shortage of talents, Mr Martin

LIAO enquired about the support rendered by InvestHK to help overseas companies recruit local talents in these sectors. PSCIT advised that as part of the aftercare support services, InvestHK provided overseas companies with necessary information and support in their applications for employment visa for their expatriate staff and in recruitment of local staff. Should there be any difficulties in recruiting the required talents locally, the companies might need to bring in such talents through the Admission Scheme for Mainland Talents and Professionals or the Quality Migrant Admission Scheme. InvestHK would also provide the companies with the needed support and advice in this regard.

19. Ir Dr LO Wai-kwok said that as he had already suggested at last year's meeting, the Administration should keep track of the development of companies newly established in Hong Kong and collect information, such as subsequent business expansion and additional number of jobs created, after the first year of operation. He also advised the Administration to continue strengthening its ongoing aftercare support services for overseas enterprises established in Hong Kong to facilitate their business expansion and upgrading in Hong Kong.

20. DGIP advised that dedicated teams of InvestHK had provided ongoing aftercare support for newly set up companies in Hong Kong. About 20% of the projects undertaken by the teams was on assisting such companies in upgrading and expanding their business in Hong Kong. Staff of the dedicated teams followed up with the companies concerned in 12 to 18 months' time to provide post start-up assistance as appropriate. Moreover, InvestHK also organized events targeting specific sectors and markets as an integral part of its aftercare services. These events aimed to update target companies in the priority sector and markets on new developments and provide them with networking opportunities. He added that the upgrading of InvestHK's customer relationship management system to collect the aggregate data on the number of jobs created by companies newly set up in Hong Kong was in progress.

Admin 21. Ir Dr LO Wai-kwok requested the Administration to provide follow-up information on the business development of newly established companies, such as the number of staff employed etc. during their initial three to five years of operation in Hong Kong in future. He said that the provision of such information was indispensable.

Engaging industry stakeholders' support

22. Mr Charles MOK was concerned that the overseas external promotion units of InvestHK might not have the sufficient manpower to

perform the investment promotion work effectively given the vast geographical area under their purview and the lengthy process that might be involved in dealing with potential investors. Mr MOK suggested that InvestHK should consider engaging industry stakeholders in their promotion work to provide first-hand information about the business environment of relevant industries in Hong Kong to overseas companies, thereby enhancing the effectiveness of InvestHK's promotion work.

23. DGIP advised that following the expansion of the staff team of the investment promotion unit (IPU) in Hong Kong Economic and Trade Office (ETO) in Singapore and the setting up of an IPU in the new Wuhan ETO, InvestHK would be able to reach out to more companies. He said that with the adoption of a partnership approach, InvestHK had drawn a lot of professional support from the private sector in the delivery of its promotion work. For example, Investment Promotion Ambassadors, who were prominent business leaders, were engaged to serve as mentors to potential overseas investors who aspired to set up their business in Hong Kong. Local service providers were invited to attend seminars conducted in the Mainland and provide in-depth advice and support for potential investors.

Shortage of international school places

24. Ms Emily LAU, Mr Jeffrey LAM and Ir Dr LO Wai-kwok were concerned that the shortage of international school places had discouraged overseas companies from setting up their business operations in Hong Kong. They asked whether the Administration had put in place any measures to address the problem. PSCIT responded that the Commerce and Economic Development Bureau had relayed the relevant concern of the international business community to the Education Bureau. He said that vacant school premises and new sites had been allocated in the past few years for the building and development of international schools with a view to increasing the supply of international school places. International schools being allocated vacant school premises or new sites in recent years had been required to admit non-local students representing no less than 70% of their overall student population after their expansion.

Summing up

25. The Chairman urged the Administration to take note of members' concerns on the shortage of international school places. He advised that the Administration should enhance the aftercare support services for companies newly established in Hong Kong and keep track of their business development in the subsequent years in the light of members' views.

VI. Treatment of parody under the copyright regime

(LC Paper No. CB(1)1072/13-14(05) -- Administration's paper on treatment of parody under the copyright regime

LC Paper No. CB(1)1072/13-14(06) -- Paper on public consultation on treatment of parody under the copyright regime prepared by the Legislative Council Secretariat (updated background brief)

LC Paper No. CB(1)1107/13-14(01) -- Submission from Hong Kong In-media dated 17 March 2014)
(*Chinese version only*)
(*tabled at the meeting and subsequently issued via e-mail on 19 March 2014*)

Presentation by the Administration

26. At the invitation of the Chairman, PSCIT briefed members on the Government's proposed directions for taking forward the matter of the treatment of parody under the copyright regime as set out in the Administration's paper (LC Paper No. CB(1)1072/13-14(05)).

27. PSCIT said that the Administration's proposals would provide additional legal bases for special treatment for parody and matters alike which were currently suspected to be infringing copyright. The proposals would clarify that the relevant works would be outside the criminal net or would be exempted from both criminal and civil liabilities under appropriate circumstances so as to give parodists wider and clearer protection under the law. Parody and other matters which did not constitute copyright infringement under the existing law for specified reasons would remain lawful in the future.

28. Upon making reference to practice and developments in overseas jurisdictions and having regard to present day common user behaviours on the Internet as well as the views of major stakeholders, PSCIT said that the Administration considered that the existing scope of special treatment under the copyright regime could be extended to provide fair dealing exceptions for some works along a few major concepts, namely commentary on current events, works with parodic, imitative or like elements recognized as literary or artistic devices, and uses of excerpts to provide information or illustrate

arguments to facilitate discussion as commonly seen on online blogs and social media websites.

29. The Administration also proposed to clarify the provisions relating to the "prejudicial distribution" offence under the existing Copyright Ordinance and the proposed "prejudicial communication" offence under the Copyright (Amendment) Bill 2011. Emphasis would be laid on the factor of whether the infringement would amount to a substitution for the original copyright work for the court to assess possible criminal liability with regard to the relevant provisions. With the proposed clarification of the potential criminal liability for the relevant distribution and communication offences, it would be made clear that works which did not substitute the underlying work should not be caught by the criminal net. Given that the clarification was applicable to all types of uses or purposes, works that fell outside the scope of special treatment would also not attract criminal liability as long as they did not substitute the underlying work.

30. PSCIT said that the Administration's proposals would be able to address a majority of users' concerns over a wide range of common activities on the Internet. As the provision of copyright exception for User-generated Content (UGC) had yet to become an international trend and the concept remained unsettled and controversial, the Administration had reservation in adopting UGC as a subject matter for special treatment in the current round of update.

Discussion

The scope of special treatment

31. Mr Dennis KWOK noted the Administration's stance on the retention of civil liability of unjustified copyright infringing activities and enquired if parody would be given any particular exemptions from civil liability under the Administration's proposal. PSCIT responded that fair dealing exceptions had been provided under the existing Copyright Ordinance for specific acts which might be done in relation to copyright works notwithstanding the subsistence of copyright under which no civil or criminal liability would be attracted. He said that consideration would be given to widen the scope of the fair dealing exception to cover the four subjects of special treatment proposed in the public consultation exercise, namely "parody", "satire", "caricature" and "pastiche", as well as works for commenting on current events and some common Internet activities, such as "image/video capturing" for the purposes of discussion and provision of information. The relevant acts that were within the scope of special treatment under the fair dealing exceptions would be exempted from both civil and criminal liabilities as long

as their uses were fair.

32. Mr Charles MOK enquired if the examples on the common Internet activities given in paragraph 9 of the Administration's paper would be used as the subjects of special treatment in the future legislative amendments to the Copyright Ordinance. PSCIT advised that as the relevant activities did not have any clear definitions, the Administration would follow overseas jurisdictions and focus on the four specific terms, viz. "parody", "satire", "caricature" and "pastiche" as the subjects of special treatment.

33. Mr Charles MOK enquired about the justifications for not providing special treatment for online posting of earnest performance of copyright works without any parodic, critique, comic or imitative effects. Mr MOK said that he could not see the rationale of such an arrangement as it would only hamper the grooming of talents. Mr Gary FAN questioned the basis for drawing up the scope of special treatment for the common Internet activities and opined that the proposed scope of special treatment was narrow and unclear. He cited a number of examples to illustrate that an earnest performance on a copyright work could also produce comic effect, and it would be difficult to define whether the said performance would fall within the scope of special treatment when being posted on the Internet.

34. PSCIT said that the online posting of performance of copyright works without any parodic, critique, comic or imitative effects or relation to any current events might be more akin to a mere expression of feelings or showing of talent which could hardly provide sufficient public policy grounds to justify special treatment. He explained that the existing Copyright Ordinance had provided that the performance of a literary, dramatic or musical work in public was an act restricted by the copyright, and the same principle should apply to the online streaming of earnest performance of copyright works which were devoid of any parodic, critique, comic or imitative effects. Under the existing Copyright Ordinance, licences should be obtained from copyright owners for staging any public performance over their copyright works. The online posting of earnest performance of copyright works, which was considered equivalent to a public performance, without the consent of the concerned copyright owner was subject to civil liability. PSCIT stressed that meritorious cases which warrant copyright exception on public policy grounds had already been taken care of under the existing Copyright Ordinance and it was the intention of the Administration to expand the scope of special treatment. But for those unjustified cases, it was necessary for our copyright regime to impose appropriate restrictions in order to protect the creations of copyright owners and encourage more people to join the creative industry.

35. Mr Charles MOK said that given the rapid development of information technology and the rapid changes in user behaviours in the digital world, the Administration should set an observation period for the relevant amended legislation upon their enactment and further review the scope of special treatment in the light of changing circumstances.

Copyright exception for User-generated Content

36. Ms Claudia MO disagreed with the Administration's justifications for not accepting netizens' proposal for introducing a copyright exception for non-profit making UGC or UGC not disseminated in the course of trade. Ms MO said that netizens were dissatisfied with the Administration's proposals and the Administration had failed to allay netizens' concerns regarding the impact of criminal liability on freedom of expression and the free flow of information across the Internet. Netizens were of the view that confining the scope of special treatment to specific kinds of works or specific purposes would pose constraints on their creations. Ms MO questioned whether the Administration's current proposal had taken into the consideration the possible impact of the future development of the Internet on the Copyright Ordinance.

37. Mr Gary FAN opined that the Administration's proposal for not exempting secondary creations from civil liability had greatly restricted netizens' freedom of creation as they would continue to be subject to possible civil litigations instituted by resourceful copyright owners. He said that as revealed by some Internet users' organizations, there had been some incidents in the past that royalty collecting societies had demanded unreasonably high royalty for the use of their members' copyright works. Users were afraid that such a situation might get worse should civil liability exemption not be granted to secondary creations. In the light of the aforesaid, Mr FAN urged the Administration to seriously consider providing civil liability exemption for secondary creations.

38. PSCIT explained that with the enlarged scope of special treatment, the current proposals would be able to accommodate most of the common activities on the Internet that had public policy grounds to justify special treatment, thereby enhancing netizens' freedom of expression and encouraging reasonable use of copyright works without undermining the legitimate interests of copyright owners. He emphasized that the relevant activities would be exempted from both civil and criminal liabilities, as long as their uses were fair under the principles of fair dealing. Pointing out that UGC was a very wide and vague concept subject to different understanding and interpretations, PSCIT said that the Administration had reservation in adopting it as a subject matter for special treatment in the current round of

update, in particular bearing in mind the first criterion in the three-step test, i.e. any limitation or exception should be confined to a certain special case.

39. Ms Emily LAU referred to the submission of In-media (Hong Kong) tabled at the meeting (LC Paper No. CB(1) 1107/13-14(01)). She said that according to Professor Peter K. YU (Kern Family Chair in Intellectual Property Law and Director, Intellectual Property Law Center, Drake University Law School), the 4th Option proposed by users, i.e. the provision of a copyright exception for non-profit making UGC or UGC not disseminated in the course of trade, was modeled on the recently revised Canadian Copyright Act that had been accepted by the Canadian Parliament and authorities specialized in intellectual property law worldwide. In this connection, Ms LAU enquired if the views of Professor YU were acceptable to the Administration, and whether consideration would be given to providing special treatment for UGC as appropriate in order to strive for a common consensus between copyright owners and users in taking forward the matter of parody.

40. Mr CHAN Chi-chuen urged the Administration to consider introducing a fair dealing exception for UGC and incorporating the "three-step test" of international copyright treaties directly into the proposed exemption for UGC to resolve the non-compliance issue of the copyright exception for UGC with the "three-step test". He opined that the Administration should not dismiss any possible exception for UGC simply on the grounds that it was difficult to define UGC and that it could not satisfy the three-step test.

41. PSCIT reiterated that the Administration had taken a pragmatic approach to address users' concerns by focusing on the treatment of various common activities on the Internet which might constitute infringement under the Copyright Ordinance, and would consider providing special treatment for those activities that justified exceptions to copyright protection on public policy grounds in the proposed legislative amendments. In fact, the Administration's proposals would be able to address a majority of users' concerns over such activities. However, some activities that users frequently engaged in on the Internet, such as the posting of earnest performance of copyright works and unauthorized posting of translation and adaptation works which were without any parodic, critique, comic or imitative effects or relation to any current events were considered beyond the scope of special treatment as they did not involve any public policy considerations and there were hardly any cogent reasons to justify special treatment. He did not subscribe to some members' views that incorporating the term "UGC" into the scope of special treatment was the only way to address users' concerns.

42. On the compliance with the "three-step test" of international copyright treaties, PSCIT advised that the Administration had particularized the scope of special treatment under the current proposal to satisfy the requirement of the first step of the three-step test under the Berne Convention for the Protection of Literary and Artistic Works ("the Berne Convention") and the Agreement on Trade-Related Aspects of Intellectual Property Rights that any copyright exception must be confined to "special cases". Given that the proposed UGC exception was too broad and vague, the Administration noted that there were doubts as to whether the UGC concept would be able to satisfy the requirement of the first step of the three-step test. He said that the requirements of the second step ("not conflict with a normal exploitation of the work") and the third step ("not unreasonably prejudice the legitimate interests of the copyright owner/author") of the three-step test of the aforesaid international copyright treaties had already been incorporated into the relevant provisions of the existing Copyright Ordinance.

The concepts of "secondary creation" and "derivative work"

43. Mr Martin LIAO referred to paragraph 11 of the Administration's paper and sought clarification on the definition of "secondary creation". He enquired whether secondary creations were transformative in nature and should the answer be affirmative, whether independent copyrights would be generated by secondary creations as in the case of derivative works such as translations and adaptations. PSCIT responded that the definition of "secondary creation" was subject to different interpretations by users. He said that the uses of the underlying copyright works in secondary creations could be transformative or non-transformative in nature, and secondary creations with transformative uses of the underlying works might generate their own independent copyrights. Assistant Director of Intellectual Property (Copyright) added that "secondary creation" was not equivalent to "derivative work", a term that was commonly used in copyright jurisprudence. She explained that translation and adaptation, both being derivative works, were expressly protected by the international copyright treaties. According to the Berne Convention, authors of literary and artistic works protected by the Berne Convention enjoyed the exclusive right of making and of authorizing the translation, adaptations, arrangements and other alterations of their works.

The legislative time table

44. Mr MA Fung-kwok declared that he was the representative of the functional constituency of Sports, Performing Arts, Culture and Publication. He said that copyright owners in the cultural and creative industries were willing to compromise to accommodate genuine parody to facilitate the early

updating of the copyright regime. Copyright owners also welcomed the Administration's proposal for not providing copyright exception for non-profit making UGC or UGC not disseminated in the course of trade in the current round of update. Pointing out that the income of the music and record industry and the video industry had dropped by 52% and 70% respectively (figures as at 2011-2012) during the past decade and further economic loss of the relevant industries was expected should the updating of Copyright Ordinance continue to drag on, Mr MA urged the Administration to proceed with the legislative amendments to the Copyright Ordinance without further delay. He cautioned that an outdated copyright law would undermine the Administration's efforts to foster the development of the cultural and creative industries.

45. Mr Dennis KWOK, Ms Claudia MO, and Ms Emily LAU enquired about the legislative timetable. PSCIT advised that upon soliciting members' views at the meeting, the Administration would proceed with the drafting work of the relevant legislative amendments to update Hong Kong's copyright regime in the digital environment. He assured members that the Administration would take forward the matter as soon as possible.

46. Mr Charles MOK criticized the Administration for being unable to communicate clearly the objective of the consultation exercise on the treatment of parody, which was to relax the treatment of parody under the copyright regime, to overseas communities. He said that there was a misconception among Hong Kong students in the United States of America (US) that the consultation exercise on treatment of parody and the subsequent amendments to the Copyright Ordinance might prejudice freedom of expression. Pointing out that the US Government was highly concerned about the updating exercise of Hong Kong's copyright law, Mr MOK cautioned that the Administration should not overlook the concerns of international communities in this regard. He urged the Administration to handle the subject matter of parody with due care for any mishandling in the process might jeopardize the updating of the copyright regime.

Summing up

47. The Chairman said that the Panel appreciated that parody was a subject matter that was difficult to handle given the divergent views of copyright owners and users and the need to strike a right balance between protecting the legitimate interests of copyright owners and safeguarding public interests in the reasonable use of copyright works and freedom of expression. In view of the urgency in updating Hong Kong's copyright regime, he urged the Administration to present the relevant legislative proposals to LegCo expeditiously, preferably before the end of this session.

VII. New initiatives on promotion of innovation and technology

(LC Paper No. CB(1)1072/13-14(07) -- Administration's paper on new initiatives on promotion of innovation and technology

LC Paper No. CB(1)1072/13-14(08) -- Paper on promotion of innovation and technology prepared by the Legislative Council Secretariat (updated background brief))

Presentation by the Administration

48. At the invitation of the Chairman, Commissioner for Innovation and Technology (CIT) briefed members on the Administration's new initiatives and improvement measures announced in the 2014-2015 Budget Speech to enhance the application and commercialization of research and development (R&D) results. These included –

- (a) setting up an Enterprise Support Scheme (ESS) to replace the Small Entrepreneur Research Assistance Programme (SERAP) to encourage more private sector investment in R&D;
- (b) extending the scope of funding of the Innovation and Technology Fund (ITF) to provide stronger support to downstream R&D and commercialization activities; and
- (c) providing funding support to the six universities designated as local public research institutions to encourage their teams to start technology businesses and commercialize their R&D results.

Details of the new initiatives and improvement measures were set out in the Administration's paper (LC Paper No. CB(1)1072/13-14(07)).

Discussion

Setting up a new ESS

49. Mr Charles MOK noted that all companies registered in Hong Kong, regardless of size, would be eligible to apply for the proposed ESS, and that there would be no requirement for fund recoupment of the approved grant. While agreeing with the need to ensure proper use of public funds, Mr MOK was concerned that, in order to avoid criticisms of transfer of benefits to

certain large companies, the Administration might impose over stringent requirements and restrictions for assessing the applications and in monitoring the funded companies, a move that would discourage companies from applying. He also called on the Administration to consider allowing existing cases of SERAP to convert to ESS in the future. The Deputy Chairman supported that only companies registered in Hong Kong should be eligible to apply for the proposed ESS to help them create more job opportunities, nurture more R&D talents and bring about economic gains to Hong Kong. Ms Emily LAU welcomed the Administration's new initiatives and improvement measures to enhance the application and commercialization of R&D results, and hoped that these initiatives would further promote the development of innovation and technology in Hong Kong.

50. In response, CIT said that the Administration was aware that Hong Kong might lose out to neighbouring economies in attracting investment from multinational technology companies if it was too conservative in providing funding support or incentives to motivate private enterprises to invest in applied R&D. CIT advised that multinational technology companies, with their international perspectives, could create more job opportunities in various areas including R&D, marketing, design and management, which would facilitate the nurturing of talents in Hong Kong. She added that the new initiatives and improvement measures in the 2014-2015 Budget aimed to create a robust ecosystem for the growth of innovation and technology in Hong Kong through the provision of assistance and support to technology companies at various stages of development.

51. CIT further advised that funding of up to \$10 million for each approved ESS project would be provided on a generally matching basis. In implementing ESS, the Administration would draw up clear criteria to assess the technical merits, benefits to the community, proportionality and reasonableness of applications. Sufficient checks and balances would be put in place to ensure an open and objective selection process. The vetting panels for ESS would comprise prominent persons with expertise in relevant domains of the innovation and technology sector such as academia, industry, venture capital, etc to ensure a fair and balanced assessment of the applications.

52. CIT added that the Administration would monitor the funded projects to ensure alignment with objectives of ESS. Funding support to the successful applicants would be paid by instalments upon the attainment of certain deliverables/milestones as specified in the applications by the funded companies.

Setting up a new technopreneurship grant scheme through ITF

53. Mr Dennis KWOK noted that under the proposed technopreneurship grant, an annual funding of up to \$4 million would be provided to each of the six designated universities to support the setting up of technology start-ups by its teams, and that each start-up would be funded for not more than three years with an annual funding capped at \$1.2 million. He opined that such restrictions would not be conducive to encouraging universities to undertake more entrepreneurial activities or facilitate more commercial development of university intellectual property.

54. Noting that the applicant start-ups should appoint a person-in-charge who should be engaged in the company's business on a full-time basis, the Deputy Chairman was concerned that the annual funding cap of \$1.2 million for each company would not be enough to meet the expenditure of the company, including the salary of the full-time management staff.

55. In response, CIT and Deputy Commissioner for Innovation and Technology (DCIT) advised that the proposed grant was an entrepreneurial financing scheme aiming to provide the seed money to encourage teams (students/professors/alumni) from the designated universities to start technology businesses and commercialize their R&D results. According to the universities, the initial financial requirement for most start-ups was not very high. The full-time persons-in-charge of the start-ups were expected to be fresh graduates or postgraduates responsible for overseeing the operations of the company in general and liaising with the university concerned and the Innovation and Technology Commission (ITC) on matters relating to the company. The proposed funding scheme was welcomed by the universities, and the Administration would work closely with them to finalize the detailed arrangements.

56. CIT and DCIT supplemented that the proposed funding scheme would include an interface allowing the project teams to join the Incubation Programmes operated by the Hong Kong Science and Technology Parks Corporation (HKSTPC), if they satisfied the prevailing admission criteria. Other funding schemes under ITF, such as SERAP or the new ESS, might also be applicable to these start-ups as they progressed to a more mature stage. The Administration would review the operation of the proposed scheme in 2016-2017 to identify areas for improvements and to consider the way forward.

57. The Deputy Chairman requested the Administration to consider requiring each start-up to line up with at least one manufacturing company so as to ensure that their ideas or products were commercially viable. CIT

responded that start-ups were business ventures in their earliest stage of development and manufacturing of products might be required at a later stage.

58. Mr Charles MOK called on the Administration to consider formulating relevant financial policies and legislation to facilitate investments from angel investors, venture capitalist firms or crowdfunding in financing the start-ups at various stages, so as to build an effective and sustainable technology start-up ecosystem. CIT took note of Mr Charles MOK's views.

Green technology

59. Mr Martin LIAO commented that the 2014-2015 Budget had not set out any concrete measures to promote and support the development of green technology in Hong Kong. He enquired about the Administration's plan on promoting R&D in green technology. In response, CIT advised that while ITF provided funding support to green technology projects, policies relating to environmental and green technology were mainly under the purview of the Environment Bureau. HKSTPC also put emphasis on supporting the development of green technology. A case in point was HKSTPC's Green 18, a designated building designed to showcase the practice of green technology. The number of tenants engaging in green technology in the Hong Kong Science Park had also been increasing.

60. Mr Martin LIAO enquired about the progress of the R&D in fast charging station for electric vehicles undertaken by the Automotive Parts and Accessory Systems R&D Centre (APAS). Science Advisor, ITC responded that electric vehicles and fast charging station were one of the focused R&D areas of APAS. APAS had undertaken platform and collaborative projects in relation to fast charging station, and was striving to obtain accreditation from various countries and places with different charging standards so as to facilitate the popular use of electric vehicles.

Summing up

61. The Chairman concluded that members generally supported the Administration's proposed initiatives and improvement measures to enhance the application and commercialization of R&D results, and promotion of innovation and technology in Hong Kong.

VIII. Any other business

62. There being no other business, the meeting ended at 5:04 pm.

Council Business Division 1
Legislative Council Secretariat
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