

Film Censorship (Amendment) Bill 1998

**Paper for the Bills Committee:
Onus of Proof**

Purpose

This paper explains and addresses Members' concern over onus of proof in the event of institution of proceedings for an offence under Section 7 of the Film Censorship Ordinance in relation to the exhibition of a still film.

Details

2. The new section 7 of the Film Censorship Ordinance, i.e. if the Film Censorship (Amendment) Bill is passed into law, will impose a restriction on the exhibition of films as follows -

“(1) A person who exhibits a film in respect of which none of the conditions specified in subsection (2) has been satisfied commits an offence and is liable on conviction to a fine of \$200,000 and imprisonment for 1 year.

(2) The conditions referred to in subsection (1) are -

- (aa) that the film is a still film that is not subject to section 8;
- (a) that a certificate of exemption has been issued under section 9 in respect of the film; or
- (b) that a certificate of approval has been issued under section 13 in respect of the film.”.

In proceedings for an offence under Section 7, the onus is on the prosecution to establish that none of the conditions referred to in subsection (2) has been satisfied.

3. In the case of a still film, in addition to establishing that a certificate of exemption has not been issued and that a certificate of approval has not been issued, the prosecution needs to establish that the film is a still film and at least one or other of the following is applicable -

- (a) The still film was exhibited for a commercial purpose.
- (b) The still film was not of a cultural, educational, instructional, promotional or religious nature.
- (c) The still film was not exhibited by a cultural, educational, religious or professional organization or by a member of any such organization.

4. The scenario described in paragraph 3 above would apply in the case where the Film Censorship Authority had not yet served a notice under new section 8A(3) which requires the submission to him of the still film concerned. Once the notice is served, the still film is deemed to be subject to section 8 and cannot be exhibited unless either a certificate of exemption or a certificate of approval has been issued in respect of it.

Information Technology and Broadcasting Bureau
20 January 1999

Film Censorship (Amendment) Bill 1998

Paper for the Bills Committee : Chinese Version of the Bill

Purpose

As agreed at the first meeting of the Bills Committee held on 14 January, the Administration undertook to examine the Chinese version of Sections 8A(3) and 15B(4)(b)(iii) of the Film Censorship (Amendment) Bill 1998 (the Bill). This paper sets out the Administration's proposals to amend the relevant clauses of the Bill.

Proposal

2. Having reconsidered the Chinese version in the light of Members' comments, we propose to amend the Chinese version of the Bill as follows :

(a) Section 8A(3)

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荷服癩) 紇 " 荷服 矜 耕 戳丁

(b) Section 15B(4)(b)(iii)

"灑制兜份) 媯昏沮(a)璿 薄徧 斗 竝 T 兜份) "

3. Having regard to the proposed amendment to Section 15B(4)(b)(iii) above, we propose that Section 9(3)(b) be likewise amended as follows :

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Way Forward

4. Subject to Members' agreement, the Secretary for Information Technology and Broadcasting will move the proposed amendments outlined in paragraphs 2 and 3 above as Committee Stage Amendments to the Bill upon resumption of the Second Reading of the Bill.

Information Technology and Broadcasting Bureau
20 January 1999

Film Censorship (Amendment) Bill 1998

Paper for the Bills Committee: Prescribed Period for the Issue of A Certificate for Packaging

Purpose

This paper addresses Members' concern over the proposed amendment to Section 15B(4)(a) of the Film Censorship Ordinance (the Ordinance) and sets out the reasons as to why the amendment would not affect the enforcement of Section 15B. It also explains why no substitution is necessary in respect of the proposed repeal of "within 4 working days of such submission" in Section 15B(4)(a).

Background

2. Section 15B(4) of the existing Ordinance deals with the approval of the packaging of the videotape or laser disc of a film which has been approved for publication. Section 15B(4)(a) stipulates that the Film Censorship Authority (Authority) may, within 4 working days of such submission, require the part of the packaging constituting the cover of the videotape or laser disc to be enclosed in an opaque wrapper. Section 15B(4)(b) requires that the Authority shall issue a "Certificate for Packaging" to cover the packaging of the videotape or laser disc of a film, including imposing, as appropriate, a requirement for the packaging of the videotape or laser disc to be enclosed in an opaque wrapper as a condition of issue of the Certificate. A sample copy of a Certificate for Packaging is at Annex for Members' reference.

3. Although no time limit is stipulated in Section 15B(4)(b) for the issue of a Certificate for Packaging, the Authority has in practice adopted "4 working days" as the norm for making the decision that an opaque wrapper is required and for the issue of the Certificate. The two decisions have to be taken contemporaneously as the requirement of the opaque wrapper has to be endorsed on the Certificate. To put it beyond doubt and so that the Authority is bound by a specified time limit to deliver his service, a statutory time frame for issue of a Certificate for Packaging is now proposed to be included in the Amendment Bill.

The Proposed Amendments

4. We propose to amend Section 15B(4)(b) by stipulating that the Authority shall issue a Certificate for Packaging within the prescribed period (i.e. 4 working days as stipulated in Part III of the new Schedule 5 to the Film Censorship (Amendment) Regulation 1998) whether or not the Certificate stipulates the requirement that the packaging of the videotape or laser disc should be enclosed in an opaque wrapper as a condition of issue. The proposed deletion of “within 4 working days” from Section 15B(4)(a) should not be a cause for concern to a film publisher because the Authority will be required by the amended Section 15B(4)(b) to issue a Certificate for Packaging within the same prescribed period (i.e. 4 working days), with the “opaque wrapper” requirement stipulated if considered necessary and appropriate by the Authority.

5. We have examined Members’ proposal to replace the existing statutory time limit of “within 4 working days” in Section 15B(4)(a) by “within the prescribed period”. Since Section 15B(4)(a) is a requirement to be enforced by the Authority through the issue of a Certificate for Packaging and as it cannot be enforced independently without the issue of a Certificate for Packaging, it will not be necessary to repeat the “prescribed period” provision which will be stipulated in the new Section 15B(4)(b) under the Amendment Bill.

Conclusion

6. The proposed amendments to Section 15B(4)(a) and 15B(4)(b) serve to facilitate the smooth operation of Section 15B(4). We recommend that the Bills Committee accept the proposed amendments as drafted in the Bill.

Information Technology and Broadcasting Bureau
20 January 1999

FORM 6
表格 6
FILM CENSORSHIP ORDINANCE
(Chapter 392)
電影檢查條例
(第 392 章)
CERTIFICATE FOR PACKAGING
包裝物證明書

Certificate No.: **P004898**
證明書編號

Title(s) of Film: (English): _____
影片名稱: (英文)
(Chinese): _____
(中文)
(Other Language): _____
(其他語文)

Person Submitting the Packaging: _____
送呈包裝物的人

Packaging Reference No.: _____
包裝物編號

This Certificate is issued to _____ in respect of the packaging of the videotape or laserdisc of the above film. A description of the packaging (with *drawings/photos of the packaging) is attached. The packaging has been submitted under section 15B of the Film Censorship Ordinance.

本包裝物證明書就上述影片的錄影帶或雷射碟包裝物發給 _____。
現附上包裝物的描述(連包裝物的*圖樣/照片)，該包裝物已按照《電影檢查條例》第 15B 條規定送呈。

The part of the packaging constituting the cover of the videotape or laserdisc shall be enclosed in an opaque wrapper as required under section 15B(4)(a) of the Film Censorship Ordinance.
錄影帶或雷射碟包裝物的封面部分，根據《電影檢查條例》第 15B(4)(a) 條的規定，必須用不透明的封套包裝。

Date of Issue
發出日期

Censorship Mark
檢查標記

for Commissioner for Television
and Entertainment Licensing
影視及娛樂事務管理處處長
(代行)

- * Delete as appropriate.
刪去不適用項目。
- Check as appropriate.
在適當方格內作記號。

Notes
備註

1. The packaging shall contain the classification symbol applicable under section 15A(3)(a) of the Film Censorship Ordinance and the following notice, or a notice to the like effect, next to or adjacent to the symbol, in block letters and Chinese characters, prominently and legibly displayed—
包裝物須載有《電影檢查條例》第 15A(3)(a) 條所適用的分級符號，並在分級符號旁或毗鄰處有以下告示，或意思相同的告示，用英文正體和中文書寫，在顯眼處清楚展示—
“APPROVED FOR EXHIBITION, DISTRIBUTION, CIRCULATION, SALE, HIRE, PROJECTION, SHOWING, PLAYING, GIVING OR LENDING ONLY TO PERSONS WHO HAVE ATTAINED THE AGE OF 18 YEARS.
只核准對年滿 18 歲的人上映、發行、傳文、出售、出租、放映、展放、放出或播出、交給或出借”。
2. Subject to the requirement made under section 15B(4)(a) of the Film Censorship Ordinance, the packaging shall not be displayed with any alteration from the packaging in the form in which it was submitted under section 15B of the Film Censorship Ordinance.
除《電影檢查條例》第 15B(4)(a) 條另有規定外，包裝物在展示時，不得有別於根據《電影檢查條例》第 15B 條所送呈的包裝物。