

立法會
Legislative Council

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**Paper for the House Committee meeting
on 5 February 1999**

**Report of the Bills Committee on
Film Censorship (Amendment) Bill 1998**

Purpose

This paper reports on the deliberations of the Bills Committee on Film Censorship (Amendment) Bill 1998.

The Bill

2. This Bill amends the Film Censorship Ordinance (Cap. 392) (the Ordinance) so as to:

- (a) simplify existing censorship requirements for still films, i.e. slides;
- (b) empower the Film Censorship Authority (the Authority) to prescribe forms;
- (c) empower the Secretary for Information Technology and Broadcasting (SITB) to make regulation on the time frame for delivery of services to the public; and
- (d) simplify appeal procedures currently available against a decision of the Authority or a censor on film censorship matters under the Ordinance.

The Bills Committee

3. Members agreed at the House Committee meeting on 18 December 1998 to form a Bills Committee to study the Bill. The Bills Committee, under the Chairmanship of Hon Andrew CHENG Kar-foo, has held two meetings with the Administration. The membership list of the Bills Committee is at **Appendix I**.

4. The Bills Committee has received a submission from the Law Society of Hong Kong (the Law Society) on the Bill. It has also sent letters to invite views on the Bill from nine organizations which regularly submit still films for censorship. A list of the organizations which have submitted views to the Bills Committee is at **Appendix II**.

Deliberations of the Bills Committee

5. During the detailed study of the Bill, the Bills Committee has taken into account all the views received. The main deliberations of the Bills Committee are set out in the following paragraphs.

Exemption of slides of non-commercial nature from censorship requirement

6. The Bills Committee has noted that under the proposed section 8A, non-commercial slides of cultural, educational, instructional, promotional or religious nature exhibited by a cultural, educational, religious or professional organization or by a member of any such organization are exempt from submission to the Authority for classification. Non-commercial organizations have expressed support to this amendment. Members have also sought clarification on how the Authority would determine if a slide is of cultural or educational nature satisfying one of the conditions for exemption.

7. The Administration's explanation is that the primary policy intent is to regulate the commercial application of slides and not slides used in bona fide cultural, educational, instructional, promotional or religious events. The submission requirement for the latter is therefore lifted to reduce unnecessary administrative burdens on the concerned organizations. Nevertheless, upon receipt of a complaint from any member of the public, the Authority will conduct an investigation and, if deemed necessary, invoke the proposed section 8A(3) to require the submission of the slide, whether or not the slide has been exempt from submission, for classification. If a person is aggrieved by the classification of the slide on moral, religious, educational or other grounds, he may have recourse under the existing provision of section 19 and seek a review of the decision of the Authority by the Board of Review.

8. The Administration has assured members that if an exhibitor has taken advantage of the exemption and shown indecent slides, he is liable on conviction to a fine of \$200,000 and imprisonment for one year under section 7(1). Nevertheless, in proceedings for such an offence, the onus is on the prosecution to establish that none of the conditions referred to in the proposed section 7(2) has been satisfied.

Simplification of the appeal mechanism

9. To address members' concern about the proposed procedure for lodging an appeal against the decision of the Authority or a censor to the Board of Review through SITB instead of through the Chief Secretary for Administration, the Administration has explained that the proposed amendments are mainly for the purpose of streamlining and simplifying the appeal procedure.

Time frame for the delivery of services to the public

10. The Bills Committee has noted the concern raised by the Law Society on the replacement of the specified time frames in sections 9(1), 10(5), 15(B)(4)(a) and 15K(5) by "prescribed period" in sections 9(3), 10(5), 15(B)(4)(b) and 15K(5). The Law Society considers that without the time limit specified in the Ordinance, the public will have to wait for a longer period for the delivery of services by the Authority.

11. The Administration has clarified that a new section 29(1)(p) has been added to empower SITB to provide for, by regulation, any period to be prescribed under the Ordinance. The relevant time frames have been set out in the proposed Schedule 5 to the Film Censorship (Amendment) Regulation 1998 which will be made on the same day of enactment of the Amendment Ordinance. The purpose of the proposed amendment is to obviate the need for frequent legislative amendment to the Ordinance.

Power of Authority to set forms

12. The Bills Committee has noted that under the proposed section 29B, the Authority is given power to determine and set the forms that are required for the purposes of the Ordinance by administrative measures without going through legislative amendment. Members have enquired whether the film industry organizations will be confused if the forms are not stipulated in the Regulation.

13. The Administration has given its explanation that the proposed arrangement is consistent with the provisions under other Ordinances such as the Import and Export Ordinance (Cap. 60) where the Director is also empowered to determine the form of any licence and any required undertaking. The Administration holds the view that the proposed amendment can facilitate the Authority to introduce new forms and amend existing forms in response to changing circumstances at the earliest instance. Hon MA Fung-kwok has also shown support to the proposed arrangement since the film industry has not encountered any problems in fulfilling the requirements specified in the forms over the past years.

Updated term to describe any form of visual moving images

14. Members have raised concern about the meaning of the words “videotape” and “laserdisc” used in the Ordinance and asked if an updated term which can mean all different forms of visual moving images is required. The Administration has clarified that under section 2(1), a film means, inter alia, a videotape or laserdisc and includes any sound-track associated with such videotape or laserdisc; and any other record of visual moving images that is capable of being used for the subsequent screening of those images and includes any sound-track associated with such record. The Administration considers that the words used in the Ordinance are adequate to cover different forms of visual moving images and therefore it is not necessary to make any amendments at this stage. Nevertheless, the Administration has undertaken to keep track with the audio visual development and make changes when necessary.

Chinese version of the Bill

15. The Bills Committee has considered the comments made by the Law Society on the Chinese version of the Bill and has requested the Administration to reconsider the Chinese wordings of sections 8A(3) and 15B(4)(b)(iii). After reconsideration, the Administration has proposed to amend the Chinese version of sections 8A(3), 9(3)(b) and 15B(4)(b)(iii).

Committee stage amendments

16. The Committee stage amendments (CSAs) to be proposed by the Administration are at **Appendix III**. The Bills Committee has not proposed any CSAs.

Recommendations

17. The Bills Committee recommends that, subject to the CSAs to be moved by the Administration, the Second Reading debate on the Bill be resumed on 10 March 1999.

Advice sought

18. Members are invited to note the deliberations of the Bills Committee and support the recommendation at paragraph 17 above.

Legislative Council Secretariat

2 February 1999

**Bills Committee on
Film Censorship (Amendment) Bill 1998**

Membership list
(As at 14 January 1999)

Hon Andrew CHENG Kar-foo (Chairman)
Hon Cyd HO Sau-lan
Hon MA Fung-kwok
Hon SIN Chung-kai
Hon Howard YOUNG, JP
Hon YEUNG Yiu-chung
Hon Timothy FOK Tsun-ting, JP

Total : 7 Members

**Bills Committee on
Film Censorship (Amendment) Bill 1998**

**List of the organizations
which have submitted views to the Bills Committee**

Diabetic Mutual Aid Society of Hong Kong Association Ltd.

The Hong Kong Anti-Cancer Society

Hong Kong Museum of Art

Hong Kong Museum of History

Movie Producers and Distributors Association of Hong Kong Ltd.

Legislative Council Secretariat
2 February 1999

FILM CENSORSHIP (AMENDMENT) BILL 1998

COMMITTEE STAGE

Amendments to be moved by the Secretary for
Information Technology and Broadcasting

FILM CENSORSHIP (AMENDMENT) BILL 1998

COMMITTEE STAGE

Amendments to be moved by the Secretary for
Information Technology and Broadcasting

Clause

Amendment Proposed

4 In the Chinese text, by deleting the proposed section 8A(3) and substituting -

"(3) 儘管有第(1)款的規定，監督可藉用面交或掛號郵遞方式向任何憑藉第(2)款上映或擬憑藉第(2)款上映該款所述種類的定畫影片的人送達的書面通知，規定該人在自送達當日起計的5個工作天之內，或在任何個別個案中監督所准竟較長期間內，向監督送呈該定畫影片。".

5(b) In the proposed subsection (3)(b) by adding "有" before "規限".

8(c) In the Chinese text, by deleting the proposed subsection (4)(b)(iii) and substituting -

"(iii) 在一項規定已根據(a)段作出的情況下，須批署有該項規定。".