

LEGISLATIVE COUNCIL BRIEF

Patents Ordinance
(Chapter 514)
Copyright Ordinance
(Chapter 528)
Prevention of Copyright Piracy Ordinance
(Chapter 544)

INTELLECTUAL PROPERTY (MISCELLANEOUS AMENDMENTS) BILL 2000

INTRODUCTION

At the meeting of the Executive Council on 11 January 2000, the Council ADVISED and the Chief Executive ORDERED that the Intellectual Property (Miscellaneous Amendments) Bill 2000, at Annex A, should be introduced into the Legislative Council to enhance the protection of intellectual property rights in Hong Kong.

BACKGROUND AND ARGUMENT

General Background

2. We consulted the Legislative Council Panel on Trade and Industry in June 1999 on the follow up after the public consultation exercise conducted in early 1999 on possible additional legal tools to combat intellectual property right infringements. We proposed then to proceed with three relatively straightforward legislative amendments as a first step. The first of these amendments, to specify piracy and counterfeiting offences under Schedule 1 to the Organized and Serious Crimes Ordinance (OSCO), have recently been endorsed by the relevant Legislative Council Sub-

Committee and was enacted on 12 January 2000.

3. The other two legislative amendments concern the following –
 - (a) prevention of bootlegging by creating an offence of unauthorized possession of video recording equipment in a cinema or concert venue; and
 - (b) clarification of the law to facilitate prosecution of end-user corporate copyright piracy offenders, for example, firms producing their goods or services using infringing copies of computer software.

This brief deals with these two proposals.

The Proposals

(A) Unauthorized Possession of Video Recording Equipment

4. Some pirated optical discs have been made from unauthorized recordings in local cinemas. Although the trend has now abated somewhat, we should not be complacent. We need to take proactive measures to ensure that this will not recur. At present, to bring charges against a suspected bootlegger, it would be necessary for the prosecution to provide reliable evidence that the accused was making a video recording of the movie being shown. In a darkened and usually crowded cinema, this would be difficult. It would also be necessary to persuade the court beyond reasonable doubt that the recording was made for sale or hire and not for private or domestic use.

5. To overcome the problem of catching someone “red-handed”, we **propose** to create an offence of unauthorized possession of video recording equipment in premises used primarily as a cinema, theatre or concert hall for the showing of film or playing of performances. The person in charge of the venue will be empowered to authorize the possession of video recording equipment and to refuse the entry of persons possessing such equipment without authorization. The maximum penalty for unauthorized possession of recording equipment in such places will be a fine at level 2 (maximum \$5,000) on first conviction; and a fine at level 5 (maximum \$50,000) and imprisonment for 3 months on a second or subsequent conviction.

6. We have confined our proposal to the unauthorized possession of video equipment. We have not included unauthorized possession of sound recording equipment in our proposal. To do so would cause great inconvenience to members of the public. More importantly, the main problem lies in bootlegging movies and a targeted approach is justifiable.

7. To ensure that the general public or tourists are not caught unawares by the new legislation, we intend to bring the provisions into effect only after sufficiently wide and effective publicity measures have been undertaken. In this connection, the Hong Kong Theatres Association Limited, which represents virtually all the main cinemas, has undertaken to provide secure storage facilities for customers to deposit their video equipment before entering their cinemas. They will also put in place eye-catching posters and announcements on the prohibition of video equipment in cinemas. In addition, warning messages will be relayed to those who purchase tickets via the telephone or the Internet. A similar message will be shown on the screen before the beginning of a movie. Similar publicity measures will be arranged for concert venues. We will also produce radio and television announcements of public interest to spread the message.

8. We have considered whether we should make it a mandatory requirement for venue operators to provide storage facilities. However, such a requirement would present very complicated legal issues on the rights and obligations of the concerned parties. On balance, we believe that the provision of such facilities by administrative arrangement, coupled with the undertaking from the representative association, is more flexible.

(B) Corporate Copyright Piracy

9. Section 31 of the Copyright Ordinance stipulates, *inter alia*, that a person infringes the copyright of a work if he, without the licence of the copyright owner, possesses a copy of the work which he knows or has reason to believe to be an infringing copy **for the purpose of trade or business**. Section 118(1)(d) provides that a person commits an offence if he, without the licence of the copyright owner, possesses an infringing copy of a copyright work **for the purpose of trade or business** and with a view to committing any infringing act. Section 118(1)(e)(iv) further provides that it is an offence to distribute an infringing copy of a copyright work **for the purpose of trade or business**.

10. Our legal counsel has advised that it is uncertain whether the above highlighted provisions are sufficient to cover infringing acts for which the trade or business in question does not consist of dealing in the infringing goods concerned. For example, a firm may engage in normal business activities using pirated computer software. We therefore **propose** to amend the relevant legislation to put it beyond doubt that such infringing acts are caught by our law.

THE BILL

Clauses 2 - 12: Clarification of the expression “for the purpose of trade or business” in the Copyright Ordinance

11. The expression “for the purpose of trade or business” in sections 31, 32, 95, 96, 109, 118, 120, 207, 211, 228 and 273 of the Copyright Ordinance is repealed and substituted by “for the purpose of, in the course of, or in connection with, any trade or business”. These amendments will make it clear that it will constitute an infringement act under the relevant provisions of the Copyright Ordinance to use an infringing article in the course of business activities, regardless of whether the business is in the dealing of the infringing articles themselves.

Clauses 13, 15-24 and 26-28: Reorganization of the Prevention of Copyright Piracy Ordinance

12. These clauses are technical amendments to the Prevention of Copyright Piracy Ordinance. The Ordinance is reorganized into different parts to accommodate the addition of a new Part III dealing with unauthorized possession of video recording equipment.

Clauses 14 and 25: Prohibition of Unauthorized Possession of Recording Equipment in Places of Public Entertainment

13. Clause 25 adds a new Part III to the Prevention of Copyright Piracy Ordinance to prohibit the possession of unauthorized video recording equipment in places of public entertainment used primarily as a cinema, theatre or concert hall for the showing of film or playing of performances. Clause 14 amends section 2 of the Ordinance to add definitions of several terms used in the new Part III. The proposed section 31C makes it an offence for any person to possess without lawful authority video recording equipment in the places of public entertainment concerned.

14. The proposed section 31D authorizes the manager of a place of public entertainment to refuse admission to persons who possess such equipment. The proposed section 31E confers powers on authorized officers to, among other things, enter and search places of public entertainment for the purpose of ascertaining whether an offence under the proposed section 31C is being committed.

Clause 30 : Minor Amendments

15. The opportunity has been taken to rectify an existing technical error in section 116 of the Patents Ordinance.

16. The relevant provisions of the Copyright Ordinance, the Prevention of Copyright Piracy Ordinance and the Patents Ordinance to be amended by the Bill are at Annex B.

LEGISLATIVE TIMETABLE

17. The legislative time table will be as follows -

Publication in the Gazette	14 January 2000
First Reading and Commencement of Second Reading debate	26 January 2000
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

BASIC LAW IMPLICATIONS

18. The Department of Justice advises that the proposed Bill does not conflict with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

19. The Department of Justice advises that the Bill is consistent with the human rights provisions of the Basic Law.

BINDING EFFECT OF THE LEGISLATION

20. The amendments will not affect the current binding effect of the Copyright Ordinance, the Prevention of Copyright Piracy Ordinance and the Patents Ordinance.

FINANCIAL AND STAFFING IMPLICATIONS

21. The enforcement of the new provisions may create additional duties which the Customs and Excise Department will absorb from within its existing resources.

ECONOMIC IMPLICATIONS

22. The proposed amendments will better protect intellectual property rights. This is in line with our international obligations and is conducive to the proliferation of innovative ideas, which are critical to the long-term economic growth of Hong Kong.

PUBLIC CONSULTATION

23. We received widespread support for the two proposals covered by this memorandum in the consultation exercise conducted in early 1999. The Legislative Council Panel on Trade and Industry also supported the proposals when we consulted it in June 1999. We have consulted the Hong Kong Theatres Association on the prohibition on unauthorized possession of video equipment in cinemas. The Association welcomes the provisions and has undertaken to publicize the prohibition and provide storage facilities for cinema-goers to deposit their video recording equipment.

PUBLICITY

24. A Legislative Council brief and a press release will be issued on 13 January 2000. A spokesman will be available to handle media enquiries.

ENQUIRIES

25. Enquiries on this brief could be referred to Mr Philip Chan, Principal Assistant Secretary for Trade and Industry, on telephone number 2918 7480.

Trade and Industry Bureau
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