

香港特別行政區政府工商局的信頭

**Letterhead of TRADE AND INDUSTRY BUREAU GOVERNMENT OF THE HONG
KONG SPECIAL ADMINISTRATIVE REGION**

Our ref. : TIB 09/46/12
Your ref. : LS/B/26/99-00

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31 May 2000

By Fax

Miss Anita Ho
Assistant Legal Adviser
Legislative Council Secretariat
8 Jackson Road
Central
Hong Kong

Dear Miss Ho,

Intellectual Property (Miscellaneous Amendments) Bill 2000

Thank you for your letter of 14 February. Please accept our apologies for not being able to revert earlier. Our reply to the issues raised in your letter, *seriatim*, is as follows.

1. Clause 2(c) - Use of the term “dealing in”

The expression “dealing in” in clauses 2 to 12 covers activities such as trading, trafficking, buying and selling, letting, hiring etc. In the Chinese text of these clauses, the expression “買賣” also covers most of these acts where buying and selling are inevitably involved. Nonetheless, we are grateful for your comment and are considering if better terms could be adopted to reflect our policy intention more clearly.

2. Clause 14 - Definitions of “place of public entertainment” and “video recording equipment”

You are concerned that the definition of “place of public entertainment” may not cover buildings such as a hotel which may from time to

time be made available for the purposes of public entertainment. Our intention is not to cover those premises where there is only an occasional showing of films or other performances. This has been made clear in paragraph (a) of the definition where it is stated that a “place of public entertainment” means, amongst other things, any building that is “used *primarily* as a cinema, theatre or concert hall...”.

As regards the exclusion of “a foyer” in the definition, it should be noted that the exclusion is applicable to all those buildings that fall within the definition of a “place of public entertainment”. The exclusion is designed to allow visitors to be adequately forewarned before entering the “place of public entertainment” where the film is shown.

In the definition of “video recording equipment”, the expression “...capable of making a recording...” should be construed to give it its natural meaning. We consider your concern that the equipment may not have battery or tape installed has already been clearly addressed in the definition, where there is no requirement that the equipment has to be operational at the material time.

3. Clause 25 - Ban on the possession of video recording equipment in “place of public entertainment”

We note your concern that the proposed ban may seem inappropriate for those persons who may have no intention of making bootlegged copies of movies or performances.

The proposed prohibition was designed specifically to tackle the problems in enforcing the existing provisions in the Copyright Ordinance against bootlegging. Under the existing provisions, we need to fulfill the following in order to prosecute such activities successfully -

- (a) the defendant has to be caught “red-handed”, i.e. either he is making a video recording of the movie being shown, or in possession of video recording equipment and an infringing copy of the movie or part of the movie;
- (b) the court has to be satisfied beyond reasonable doubt that the defendant was making a video recording of the movie then shown; and
- (c) the recording was made for sale or hire and not for private or domestic use.

Proof of these elements is difficult when the unlawful act takes place in a crowded and darkened cinema.

We have carefully considered whether we should have a defence provision in the proposed prohibition. However, we consider that such a provision will be fraught with the same difficulties in enforcement, rendering our proposal as ineffective.

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. We believe that this will adequately address your concern.

Yours sincerely,

pp (Johann Wong)
for Secretary for Trade and Industry

c.c. DIP

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Mr. W.L. Cheung)

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