

**Bills Committee on Intellectual Property  
(Miscellaneous Amendments) Bill 2000**

**Introduction**

This notes sets out the Administration's response to the issues raised by Members at the meeting of the Bills Committee on 1 June 2000.

**Educational Institutions**

2. Members were concerned whether photocopying for the purpose of instruction or examination in schools and other educational establishments would constitute a criminal offence as a result of the amendments to the Copyright Ordinance as set out in Clauses 2 to 12 of the Bill.

3. "Educational establishment" as defined under Section 195 of the Copyright Ordinance (Cap. 528) means the educational establishments specified in Schedule 1 of the Ordinance. It covers, among other things, any school within the meaning of Section 3 of the Education Ordinance (Cap. 279) which is entirely maintained and controlled by the Government, any school which is registered or provisionally registered under Cap. 279, any post secondary college registered under the Post Secondary Colleges Ordinance (Cap. 320), universities and colleges of further education.

4. There are specific permitted acts (i.e. acts which do not infringe copyright) relating to educational purposes under Sections 41 - 45 in Division III of Part II of the Copyright Ordinance. For example, under Section 41, copying (otherwise than by means of a reprographic process) for use in giving or receiving instructions, or for the purpose of an examination, will not infringe any copyright in the work being copied. Section 45 specifically deals with reprographic copying. It provides, among other things, that reprographic copies of artistic works or of passages from published literary, dramatic or musical works may, to a reasonable extent, be made by an educational establishment for the

purposes of instruction without infringing any copyright in the work. Section 38 also allows copying for research and private study.

5. Section 45 further provides that reprographic copying is not authorised if licences under licensing schemes are available authorising the copying in question. In this connection, and to allow for multiple photocopying of a copyright work on a large scale, both the Hong Kong Subsidised Secondary Schools Council and the Hong Kong Subsidised Primary Schools Council have reached an agreement with the Hong Kong Reprographic Rights Licensing Society, which represents a majority of textbook publishers, on the photocopying of textbooks.

### **Mandatory Warning Signs on the Prohibition of Unauthorised Video Recording Equipment**

6. Members asked if the Bill should include a mandatory requirement for the cinema or other places of public entertainment to put up a warning notice on the proposed prohibition of unauthorised possession of video recording equipment.

7. We have carefully considered this suggestion. If the Bill were to include such a provision, it would also need to prescribe the size, content and location of placement of the notice. This might not be straightforward having regard to different types of places of public entertainment and possible physical limitations for some of them. On the other hand, there is every incentive for cinemas and other places of public entertainment to put up such a notice voluntarily to avoid unnecessary confrontation with customers. For example, the Hong Kong Theatres Association Limited has undertaken to ask its members to put up clear warning notices, prominently at the entrance of cinemas. On balance, we believe that a voluntary approach should be sufficient. We intend to bring the provision into effect after sufficiently wide and effective publicity measures are undertaken by the Government.

### **Definition of “Place of Public Entertainment” in the Bill**

8. Members asked if a venue that is not normally used for the showing of films or performances but that is used for such purposes during a specified period, are covered by the proposed prohibition of

unauthorised possession of video recording equipment during the period. For example, a function room of the Hong Kong Convention and Exhibition Centre (HKCEC) may be hired for use as the venue for a musical performance for one week.

9. Under Clause 14 of the Bill, a “place of public entertainment” is defined as, among other things, any building (which includes a part of a building by virtue of the definition of “building” in the same clause) that is “used primarily” as a cinema, theatre or concert hall for the showing or playing of films or the performance of literary, dramatic or musical works. The words “used primarily” mean that the venue must be used mainly or for the most part for the showing or playing of films etc. They are intended to limit the scope of the proposed prohibition so that it does not cover temporary venues or venues that are used only occasionally for the showing or playing of films etc., such as school auditoriums. Whether the HKCEC or other venues falls under the definition depends on their main use. If a room is not used mainly for showing or playing of films etc., then it could not be said to be “used primarily” for such purposes and would therefore not be covered by the prohibition. If, on the other hand, the room is mainly used for such purposes, then it would be covered.

10. It should, however, be noted that even if a venue is not covered by Clause 14 of the Bill, the operator of the venues could still implement administrative measures on prohibiting unauthorised use or possession of video recording equipment within their premises in accordance with the needs of the show or performance held.

### **Committee Stage Amendments (CSA)**

11. We intend to move the following CSAs to the Bill as detailed below. A copy of the draft CSAs will be forwarded to Members as soon as possible.

#### The expression “dealing in” in Clauses 2 to 12.

12. As noted by the Legislative Council Assistant Legal Adviser, the expression “dealing in” in Clauses 2 to 12 covers activities such as trading, trafficking, buying and selling, letting, hiring, etc. To better reflect the meaning of the expression “dealing in” in the Chinese

rendition, we therefore propose to move a CSA to replace the existing expression “買賣” by “經營”. In addition, we will provide a definition of “dealing in” along the above lines to ensure that the meaning of the expression is clear.

#### The English title of the Secretary for Trade and Industry

13. Following a re-organisation of the Trade and Industry Bureau and the departments under its charge, the English title of the Secretary for Trade and Industry will be changed to “Secretary for Commerce and Industry” with effect from 1 July 2000. We will therefore move a CSA to amend the title in Clause 1 of the Bill accordingly.

#### Section 119(1) of the Copyright Ordinance

14. Recently, the court queried whether some cases referred to in Section 119(1) of the Copyright Ordinance should be tried at the Magistrate Court instead of the District Court as the venue of trial is not specified in the Ordinance and the language used in Sections 119(1) and 119(2) are slightly different. To address the court’s concern, we propose, to amend Section 119(1) by adding the expression “on indictment” after “on conviction” to bring it into line with the language in Section 119(2). This technical amendment will put it beyond doubt that serious cases of copyright infringement under Section 119(1) could be tried at the higher courts.

Trade and Industry Bureau

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