

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

Introduction

This note sets out the Committee Stage Amendments ("CSA") (see the Annex) to the Intellectual Property (Miscellaneous Amendments) Bill 2000 to be moved by the Administration at the sitting of the Legislative Council on 26 June 2000.

The Committee Stage Amendments

Clause 1

2. The CSA reflects the change in the English title of the Secretary for Trade and Industry to "Secretary for Commerce and Industry" with effect from 1 July 2000.

Clauses 2(c), 3(b), 4(b), 5(b), 6(b), 7(c), 8(b), 9(b), 10(b), 11(b) and 12

3. As agreed by the Bills Committee at its meeting on 9 June 2000, the CSAs to Clauses 2(c), 3(b), 4(b), 5(b), 6(b), 7(c), 8(b), 9(b), 10(b), 11(b) and 12 replace the existing Chinese expression "買賣" by "經營" to reflect more clearly the meaning of the expression "dealing in".

New Clauses 8A, 8B, 11A, 11B and 12A

4. The CSAs add a definition and other related cross-references for the expression "dealing in" in the Copyright Ordinance (Cap. 528) to include buying, selling, letting for hire, importing, exporting and distributing.

New Clause 7A

5. As agreed by the Bills Committee at its meeting on 9 June 2000, this CSA amends Section 119(1) of the Copyright Ordinance and inserts the words "on indictment" after "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.

Clause 25(a)

6. Having regard to the views expressed by Members at the meeting

on 9 June 2000, we propose to insert a defence of "reasonable excuse" for the offence of unauthorised possession of video recording equipment in a place of public entertainment under the proposed Section 31C(1) in Clause 25. The scope of the "reasonable excuse" defence would be limited as people will be forewarned of such prohibition by way of statutory warning notices (see paragraphs 7 to 9 below). We therefore consider that we should still be able to meet our objective of deterring bootlegging even with the insertion of the proposed defence.

Clause 25(b)

7. Having regard to the views of the Bills Committee, this CSA adds a new Section 31E in the Prevention of Copyright Piracy Ordinance (Cap. 544), providing for a statutory requirement for the display of warning notices by the managers of the places of public entertainment. Subsection (1) stipulates that the notices will indicate that unauthorised possession of video recording equipment in a place of public entertainment is prohibited. The CSA broadly follows the wording of a similar requirement under the Smoking (Public Health) Ordinance (Cap. 371).

8. Subsections (2) and (3) of the proposed Section 31E require, respectively, that the notices shall be in the prescribed form and shall include the prescribed statements to be displayed in such manner and locations as stipulated by the Secretary for Commerce and Industry by regulation under Section 38 of the Prevention of Copyright Piracy Ordinance. Subsection (4) requires that the warning notices should be maintained by the manager in legible condition and good order. We intend to consult concerned parties including cinema and concert hall operators on the details of the warning notices before enacting the relevant subsidiary legislation.

9. Subsection (5) stipulates that failure by a manager of a place of public entertainment to display or maintain the prescribed warning notices would attract a maximum penalty of a fine at level 2 (\$5,000). In this connection, subsection (6) defines a "manager" to include the owner or licensee of the place of public entertainment. This enhances the definition of that "manager" in Clause 14, so the owner and the licensee may also be responsible for not displaying the prescribed warning notices.

Clauses 25(c), 26 and 29 and New Clause 28A

10. The CSAs to Clauses 25(c) and 26 are consequential amendments that deal with re-numbering of clauses following the addition of the new Section 31E. New Clause 28A is a consequential technical amendment

arising from the regulations envisaged under the new Section 31E. The CSA to Clause 29 corrects a minor typographical mistake by replacing "disc" with "discs".

Advice Sought

11. Members are requested to endorse the proposed CSAs.

Trade and Industry Bureau

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