

立法會
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Paper for the House Committee meeting on 23 June 2000

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

Purpose

This paper reports on the deliberations of the Bills Committee on Intellectual Property (Miscellaneous Amendments) Bill 2000.

The Bill

2. The Bill amends the Copyright Ordinance (Cap.528), the Prevention of Copyright Piracy Ordinance (Cap.544) and the Patent Ordinance (Cap 514) mainly for the following purposes:

- (a) creating an offence of unauthorized possession of video recording equipment in a place of public entertainment for the prevention of bootlegging; and
- (b) clarifying the law to facilitate prosecution of end-user corporate copyright piracy offenders.

The Bills Committee

3. The House Committee decided at its meeting on 11 February 2000 to form a Bills Committee to study the Bill. The membership list of the Bills Committee is at **Appendix I**. Under the Chairmanship of Hon SIN Chung-kai, three meetings have been held to exchange views with the Administration on the details of the Bill.

Deliberations of the Bills Committee

4. The Bills Committee notes that the proposed amendments in the Bill are made after the public consultation exercise conducted in early 1999 on “Possible additional legal tools to combat intellectual property right infringements”. From the two joint

submissions received from the movie industry associations and the copyright-based industries, the Bills Committee notes that there are strong support from the industries for the early passage of the Bill.

5. The Bills Committee however have studied in detail how far protection could be ensured for the innocent public under the proposed provisions of the Bill. Details of the deliberations of the Bills Committee in this respect are given in the ensuing paragraphs.

Unauthorized possession of video recording equipment

6. Under the proposed provisions of the Bill, any person who, without lawful authority, has in his possession in a place of public entertainment any video recording equipment commits an offence. The offence is liable to a fine at level 2 (\$5,000) on first conviction, and on subsequent conviction to a fine at level 5 (\$50,000) and imprisonment for three months.

7. The Bills Committee notes that there is wide support from the movie industry for the proposed creation of an offence for the unauthorised possession of video recording equipment, which is meant to prevent bootlegging in cinemas. Members are however concerned about the strict legal liability for the mere possession of unauthorized video equipment. They consider it more justified to criminalize the act of video recording rather than the act of mere possession of video recording equipment in cinemas. Members point out that the creation of the said offence will easily catch the public unawares particularly with the increasingly common use of digital cameras, which could also be able to record moving images and could therefore be regarded as a video recording equipment.

8. The Administration explains that the proposed prohibition of video recording equipment in cinemas is designed specifically to tackle the problems in enforcing the existing provisions in the Copyright Ordinance against bootlegging. Under the existing provisions, in order to prosecute such activities successfully, the following has to be fulfilled -

- (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 is making a video recording of the movie then shown; and
- (c) the recording is made for sale or hire and not for private or domestic use.

According to the Administration, proof of these elements is difficult when the unlawful act takes place in a crowded and darkened cinema. There is therefore a need to introduce the proposed prohibition to effectively prevent bootlegging.

9. Members are of the view that as a matter of legal policy and in term of fairness to a person who merely possesses a video recording equipment and has no intention of bootlegging in cinemas, consideration should be given to introducing defence provisions for the protection of the innocent public. The Administration subsequently agrees to move Committee Stage amendments (CSAs) to introduce a defence of “reasonable excuse” for the offence of unauthorized possession of video recording equipment in a place of public entertainment. The scope of the defence would be limited as the public would be forewarned of the prohibition by way of warning notices.

10. To ensure that the general public or tourists are not caught unawares by the new legislation, the Administration intends to bring the provisions into effect only after sufficiently wide and effective publicity measures have been undertaken. According to the Administration, 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 recording equipment before entering the cinemas. They will also put in place eye-catching posters and announcements on the prohibition of video recording 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. The Administration will also produce radio and television announcements to spread the message.

11. Members of the Bills Committee however do not consider the above measures sufficient and have requested that further consideration be given to the introduction of statutory requirements for cinemas and other places of public entertainment to display warning notices on the prohibition of unauthorized possession of video recording equipment. The Administration accepts the Bills Committee’s proposal and agrees to move CSAs to provide for a statutory requirement for the display of warning notices by managers of places of public entertainment. These warning notices shall be in the prescribed form and shall include the prescribed statements to be displayed in such locations as stipulated by the Secretary for Commerce and Industry by Regulation under section 38 of the Prevention of Copyright Piracy Ordinance. Failure by a manager of a place of public entertainment to display or maintain the prescribed warning notices will attract a maximum penalty of a fine at level 2 (\$5,000). The Administration will consult concerned parties including cinema and concert hall operators on the details of the warning notices before enacting the relevant subsidiary legislation.

12. Members also note that 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. In this respect, members question whether a function room of the Hong Kong Convention and Exhibition Centre, which is not normally used for the showing of films or performances but is used for such purposes

during a specified period, is covered by the proposed prohibition of unauthorized possession of video recording equipment during the period.

13. The Administration advises that if a room is not used mainly for showing or playing of films etc., 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 the prohibition would apply. However, even if a venue is not covered by clause 14 of the Bill, the operator of the venue 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.

Corporate copyright piracy

14. Under the existing provisions of the Copyright Ordinance, a person infringes the copyright of a work if he, without the licence of the copyright owner, possesses or distributes 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. As it is uncertain whether the existing provisions are sufficient to cover infringing acts for which the trade or business in question is not involved in the dealing of the infringing goods concerned, the Administration proposes to amend the relevant legislation to put it beyond doubt that such infringing acts are caught by the law.

15. As the proposed amendments will facilitate prosecution of end-user corporate copyright infringement, members are concerned about how these provisions would apply to corporate users. Members note that it is an infringement act to use infringing articles in the course of business activities, regardless of whether the business is in the dealing of the infringing articles. Thus, for example, a firm engaging in normal business activities but using pirated computer software will be caught by these amendments. There are, however, defence provisions under section 118(3) of the Copyright Ordinance which provides that it will be a defence for the person charged to prove that he did not know and had no reason to believe that the copy in question is an infringing copy of the copyright work. It will not constitute an infringement act if the use of the infringing copy is not for the purpose of, in the course of, or in connection with, any trade or business.

16. Members are 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. According to the Administration’s explanation, there are specific permitted acts relating to educational purposes under sections 41 to 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.

17. Section 45 further provides that reprographic copying is not authorized by the section if, or to the extent that, licences under licensing schemes are available authorizing the copying in question and the person making the copies know or ought to have been aware of that fact. 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.

18. As regards the legal implications of the Bill on the newspaper copying services which are currently provided to many corporate users, members note that the Bill will criminalize those copying services which are performed without proper licences from newspaper associations. In this connection, the Administration will conduct wide publicity on the legal implications of the Bill upon its passage. It will alert newspaper copying services on the need to apply for licences from newspaper associations in order to continue their services.

Committee Stage amendments

19. Apart from the CSAs mentioned above, the Administration will also propose a number of textual amendments to the Bill. Members are in support of the amendments to be moved by the Administration which are set out in **Appendix II**.

Recommendation

20. The Bills Committee supports the Bill and recommends that, subject to the amendments at Appendix II to be moved by the Administration, the Second Reading debate on the Bill be resumed on 26 June 2000.

Council Business Division 1
Legislative Council Secretariat
22 June 2000

《2000 年知識產權(雜項修訂)條例草案》委員會
Bills Committee on Intellectual Property
(Miscellaneous Amendments) Bill 2000

委員名單
Membership list

單仲偕議員(主席)	Hon SIN Chung-kai (Chairman)
夏佳理議員	Hon Ronald ARCULLI, JP
馬逢國議員	Hon MA Fung-kwok
許長青議員	Hon HUI Cheung-ching
楊耀忠議員	Hon YEUNG Yiu-chung

合共： 5 位議員
Total： 5 Members

日期：2000 年 6 月 1 日
Date： 1 June 2000

INTELLECTUAL PROPERTY (MISCELLANEOUS AMENDMENTS) BILL 2000

COMMITTEE STAGE

Amendments to be moved by the Secretary for Trade and Industry

<u>Clause</u>	<u>Amendment Proposed</u>
1(2)	By deleting “Trade” and substituting “Commerce”.
2(c)	By deleting “買賣” and substituting “經營” .
3(b)	By deleting “買賣” and substituting “經營” .
4(b)	By deleting “買賣” and substituting “經營” .
5(b)	By deleting “買賣” and substituting “經營” .
6(b)	By deleting “買賣” and substituting “經營” .
7(c)	By deleting “買賣” and substituting “經營” .
New	By adding - “7A. Penalties for offences under section 118 Section 119(1) is amended by adding “on indictment” after “conviction”.”.
8(b)	By deleting “買賣” and substituting “經營” .

New

By adding -

“8A. Minor definitions

Section 198 is amended -

(a) by renumbering it as section 198(1);

(b) by adding -

“(2) In sections 31(2), 32(3), 95(1A), 96(6A), 109(1A), 118(8A) and 120(2A), “dealing in” (經營) includes buying, selling, letting for hire, importing, exporting and distributing.”.

8B. Index of defined expressions

Section 199 is amended -

(a) by repealing “198” wherever it appears and substituting “198(1)”;

(b) by adding -

“dealing section
in 198(2)”.

9(b)

By deleting “買賣” and substituting “經營” .

10(b)

By deleting “買賣” and substituting “經營” .

11(b) By deleting “買賣” and substituting “經營” .

New By adding -

“11A. Expressions having same meaning as in copyright provisions

Section 238 is amended by adding -

“(1A) In sections 207(1A), 211(1A) and 228(1A), “dealing in” (經營) includes buying, selling, letting for hire, importing, exporting and distributing.”.

11B. Index of defined expressions

Section 239 is amended by adding -

(a) by repealing “198” opposite the expression “business” and substituting “198(1)”;

(b) by adding -

“dealing section
in 238(1A)”.

12 By deleting paragraph (b) and substituting -

“(b) by adding -

“(6) It is immaterial for the purpose of subsection (2) (a) whether or not the trade or business consists of dealing in devices or means specifically designed or adapted to circumvent forms of copy-protection.

(7) In subsection (6), “dealing in” (經營) includes buying, selling, letting for hire, importing, exporting and distributing.”.”.

New

By adding -

“12A. Copyright: Transitional provisions and savings

Schedule 2 is amended, in paragraph 40, by repealing “198” and substituting “198(1)”.”.

25

(a) In the proposed section 31C(1), by adding “or reasonable excuse” after “lawful authority”.

(b) By adding after the proposed section 31D -

“31E. Display of notices

(1) The manager of a place of public entertainment shall display and keep displayed notices, in English and Chinese, to the effect that the unauthorized possession of video recording equipment in that place is prohibited, which notices shall be in the prescribed form and include the prescribed statements.

(2) The manager shall display the notices referred to in subsection (1)

in the manner and in the locations required by the regulations.

(3) The manager shall maintain the notices referred to in subsection (1) in legible condition and good order.

(4) Any manager who contravenes subsection (1), (2) or (3) commits an offence and is liable on conviction to a fine at level 2.

(5) In this section, “manager” (管理人) also includes any person who holds or is required to hold a licence granted under the Places of Public Entertainment Ordinance (Cap. 172) in relation to the place of public entertainment.”.

(c) In the proposed section 31E -

(i) by renumbering it as section 31F;

(ii) in subsections (2)(a) and (3)(b), by deleting “section 31C” and substituting “this Part”.

26 By deleting “31E” and substituting “31F”.

New By adding -

“28A. Regulations

Section 38 is amended -

(a) in paragraph (a), by

repealing “and”;

(b) by adding -

“(aa) for the purposes of any provision of this Ordinance which contemplates or authorizes the making of regulations with respect to any matter; and”.’”.

29

By deleting “disc” and substituting “discs”.