

立法會
Legislative Council

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Subcommittee to study
The Organized and Serious Crimes Ordinance
(Amendment of Schedule 1) Order 1999

Minutes of the third meeting
held on Friday, 17 December 1999 at 8:30 am
in Conference Room B of the Legislative Council Building

Members present : Hon Mrs Selina CHOW LIANG Shuk-ye, JP (Chairman)
Hon CHAN Kam-lam
Hon SIN Chung-kai

Member absent : Hon MA Fung-kwok
Hon James TO Kun-sun

Public officers attending : Mr Philip CHAN
Principal Assistant Secretary for Trade and Industry

Mr Vincent POON
Assistant Commissioner of Customs & Excise

Mr Kevin ZERVOS
Senior Assistant Director of Public Prosecutions

Miss Betty CHOI
Senior Government Counsel

Mr Johann WONG
Assistant Secretary for Trade and Industry

Clerk in attendance : Mrs Mary TANG
Chief Assistant Secretary (1)6

Staff in attendance : Miss Anita HO
Assistant Legal Adviser 2

Ms Rosalind MA
Senior Assistant Secretary (1)9

I. Meeting with the Administration

Discussion with members on the difficulties of optical disc manufacturers

The Chairman drew members' attention to a newly received submission from the Optical Disc Manufacturing and Technologies Association Limited (ODMTA). Instead of requesting for an exemption from the application of the Organized and Serious Crimes Ordinance (Amendment of Schedule 1) Order 1999 (the Order), ODMTA asked for deferring the introduction of the Order for two years. It undertook to work out with other members of the trade and copyright-based industry for the establishment of a central copyright authentication centre and a set of comprehensive procedural guidelines for verifying copyright authorizations during the two years' time.

2. While fully understanding the possible impact of the Order on the manufacturers, Mr SIN Chung-kai opined that the Order was in no way targeting against them. The Democratic Party supported the introduction of the Order to provide additional legal tools in combating piracy and counterfeiting offences. To address the concerns of the manufacturers, he urged the Administration, in particular, the Trade and Industry Bureau (TIB) and the Customs and Excise Department (C&ED) to provide necessary assistance to them. He suggested that the following measures could be taken to alleviate the manufacturers' hardship -

- (i) Organizations from the copyright-based industry could help to alleviate the manufacturers' burden of verifying copyright authorizations through the establishment of simple and standard procedures for the latter to obtain information for copyright verification;
- (ii) To facilitate inspection arrangements, C&ED should develop a transparent mechanism by setting out its procedural guidelines as well as its requirements so that manufacturers could be able to comply with them as far as possible; and
- (iii) TIB could perform a coordinating role in assisting the manufacturers to develop a code of practice in consultation with the copyright-based industry and C&ED.

3. In response to Mr SIN Chung-kai's suggestion in (ii) above, the Assistant Commissioner of Customs and Excise (AC/CE) explained that before the enactment of the Copyright Ordinance last year, the C&ED had arranged briefings on the requirements of the copyright legislation for trade members. Enquiries from trade members were always welcome and they could approach C&ED anytime to discuss their problems or raised any questions concerning the enforcement of copyright

legislation. PAS/TI added that the Administration had been actively communicating with trade members, including associations of optical disc manufacturers and copyright-based industry, through a series of briefings and meetings.

4. Mr CHAN Kam-lam said that he had no objection to the Order in principle. However, he was concerned about the impact of the Order on optical disc manufacturers who had expressed worries about their being made scapegoats for piracy offences. He advised that in applying the powers given under the Order, the Administration had to exercise adequate care such that innocent manufacturers who were unable to detect fake authorization would not be victimized. It would be necessary for the enforcement agent to examine carefully and decide whether the alleged act of copyright infringement was carried out by the manufacturers intentionally, whether they had exercised due diligence in verifying the authorizations, and whether they were just unable to detect fake authorizations despite efforts to do so.

5. The Chairman opined that members' concerns over the possible impact of the Order on the manufacturers was not directly related to the Order itself but more related to the enforcement of copyright legislation. She appreciated the concerns of the manufacturers and urged the Administration to explore means to provide assistance to them as mentioned above by other members. It would be more appropriate for the issue to be followed up in greater detail by the LegCo Panel on Trade and Industry. As Chairman of the Panel, Mr CHAN Kam-lam agreed that the issue should be followed-up by the Panel. He advised that the subject would most likely be included in the agenda for the regular Panel meeting in February 2000.

(Post-meeting note: The subject on prevention of copyright piracy would be discussed at the meeting of the Panel on Trade and Industry scheduled for 15 February 2000 at 10:45 am and representatives from the optical disc manufacturers and the copyright-based industry would be invited.)

6. The Principal Assistant Secretary for Trade and Industry (PAS/TI) thanked members for their support to the Order. He agreed with Mr CHAN Kam-lam that the enforcement agent need to be very careful in applying the additional legal tools made available by the Order. The Order was introduced with the objective of providing further investigative and enforcement powers for combating piracy and counterfeiting offences where organized and serious crimes might be involved. For those innocent people who unfortunately got involved in such offences, there were adequate defence provisions under section 118(3) and (5) of the Copyright Ordinance, provided that they could prove that they did not know and had no reason to believe that the copy or article in question was an infringement copy of the copyright work.

7. As to the difficulties encountered by optical disc manufacturers in verifying the copyright authorizations, PAS/TI said that these should be dealt with separately and should not distract the focus of discussion of the Order. The introduction of the Order had gained general support from members of the trade and the public except for the

ODMTA which raised objection on grounds of the possible adverse impact of the Order on its members. However, another trade association, the Hong Kong Optical Disc Manufacturers Association, supported the Order and opined that the difficulties in verifying copyright authorizations could be overcome with trade members' joint effort. In addition, the associations from the copyright-based industry could provide further assistance such as the establishment of standardized procedures for verification of copyright authorizations, to relieve the difficulties encountered by manufacturers. The manufacturing trade should work together to develop a set of proper trade practices so that all members could have proper guidelines to follow in the verification of authorizations. Examples of such guidelines were given in the information paper provided by the Administration at the last Subcommittee meeting on 1 December 1999.

8. In response to the Chairman's enquiry on the circumstances under which the powers available under the Order would be applied, PAS/TI said that the powers would only be applied when the enforcement agent was dealing with offences where there was evidence to suggest that organized and serious crimes were involved. The definitions of "organized crime" were clearly stated in section 2 of the Organized and Serious Crimes Ordinance. He assured that the enforcement agents would exercise great care in the application of these additional legal tools. Furthermore, there were adequate checks and balances built-in within the legal system. For instance, the Secretary for Justice had to apply to the Court of First Instance for a witness order under section 3 of OSCO.

9. The Chairman sought members' views on whether ODMTA's request for a two-year deferment of the Order should be supported. Members felt that deferment of the Order was not necessary provided that the Administration would exercise adequate care in the application of the powers provided by the Order so that innocent individuals would not be made scapegoats for piracy offences.

Examination of the Order

10. In response to the Assistant Legal Adviser 2, PAS/TI confirmed that the wordings of the Order would be the same as that as provided in the Legislative Council Brief. The Chairman sought clarification on the rationale behind adding the offences under the Trade Description Ordinance(TDO) instead of offences under the Trade Marks Ordinance(TMO) to Schedule 1 of OSCO. PAS/TI explained that the offences of counterfeiting registered trade marks were set out in the TDO. AC/CE supplemented that TMO focused more on the register of trade marks while TDO focused on forged trade marks and counterfeiting offences. Therefore, it would be clearer and more straightforward to include offences under TDO.

11. There being no other question on the Order, members expressed support for the Order and agreed that the Administration could proceed with necessary legislative arrangements to introduce the Order by moving a Resolution at the Council. The Chairman concluded that while giving support to the Order, the Subcommittee noted

the concerns of trade members and agreed that this should be further discussed at meetings of the Panel on Trade and Industry.

Legislative timetable

Admin. 12. PAS/TI informed members that 12 working days would be required for the Administration to serve a notice for moving a motion to the Council. Subject to the endorsement at the House Committee meeting, it would be likely that a Resolution could be moved before mid January 2000. The Chairman suggested that a verbal report be made to the House Committee in the same afternoon in order to speed up the process.

(Post-meeting note: Resolution on the Order was passed at the Council meeting on 12 January 2000.)

II. Any other business

13. There being no other business, the meeting ended at 9:45 am.

Legislative Council Secretariat

21 March 2000