

立法會

Legislative Council

LC Paper No. LS 55/02-03

Paper for the House Committee Meeting on 14 February 2003

Legal Service Division Report on Copyright (Amendment) Bill 2003

I. SUMMARY

- 1. Objects of the Bill**
 - (a) To implement certain proposals following a review of the law on copyright; and
 - (b) To repeal the Copyright (Suspension of Amendments) Ordinance 2001 (the Suspension Ordinance).
- 2. Comments**

This Bill seeks to -

 - (a) make permanent certain arrangements under the Suspension Ordinance;
 - (b) remove end-user liability in relation to parallel-imported copyright works;
 - (c) create a new offence targeting copy-shops; and
 - (d) make some other consequential amendments.
- 3. Public Consultation**

The Administration issued a document entitled "Review of Certain Provisions of the Copyright Ordinance" for a two-month consultation in October 2001. The Bill implements some of the proposals drawn up after the consultation.
- 4. Consultation with LegCo Panel**

The Panel on Commerce and Industry was briefed and consulted at four of its meetings between 12 November 2001 and 8 July 2002. Members urged the Administration to expedite the drafting of the legislative proposals and to listen to the views of the public and industry.
- 5. Conclusion**

A Bills Committee should be formed to scrutinize the Bill in detail.

II. REPORT

Objects of the Bill

- (a) To make permanent certain arrangements under the Copyright (Suspension of Amendments) Ordinance 2001 (the Suspension Ordinance) so that criminal liability for the use of pirated copies of copyright works in business is confined to Four Categories of Works, with a defence provided for employees;
- (b) To remove end-user liability in relation to parallel-imported copyright works;
- (c) To combat illicit reproduction of books by copy-shops for commercial purposes; and
- (d) To make other related amendments.

LegCo Brief Reference

- 2. CIB 07/09/5/2 dated 29 January 2003 issued by the Commerce, Industry and Technology Bureau.

Date of First Reading

- 3. 12 February 2003.

Comments

- 4. The Suspension Ordinance which suspends the operation of certain amendments effected by the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 (64 of 2000) will expire on 31 July 2003. One of the main objects of this Bill is to repeal the Suspension Ordinance, but making permanent certain suspended arrangements under the Suspension Ordinance. It is proposed that a person will be criminally liable if he possesses in the course of any business a pirated infringing copy (but not a parallel-imported infringing copy) of the Four Categories of Works, i.e. computer programs, movies, television dramas and musical recordings. However, an employee will have a defence if the pirated infringing copy in his possession is provided by his employer.

- 5. The Bill also proposes to remove civil and criminal liabilities in relation to parallel-importing and possession of copies of copyright works (i.e. original literary

works, dramatic works, musical works, artistic works, sound recordings, films, broadcasts, cable programs, and published editions) unless the importation or possession is for the following commercial purposes: selling, letting for hire, or distributing for profit or financial reward or to such an extent as would prejudicially affect the copyright owner.

6. As an illustration, the playing of a parallel-imported music CD in a karaoke establishment will no longer attract civil or criminal liability. But if a pirated music CD is played, the establishment and connected persons will be criminally liable but its employees may have a defence. If it sells or distributes for profit a parallel-imported music CD, it will incur civil liability and if the parallel-imported CD has been published for 18 months or less, it will also incur criminal liability.

7. The Bill will create a new offence targeting copy-shops. A person who provides reprographic copying services to the public will commit an offence if he possesses two or more substantially identical infringing copies of a copyright work as published in a book, magazine or periodical (the principal work) unless he can show that -

- (a) he did not know and had no reason to believe that the copies in question are infringing copies;
- (b) the principal work are available free of charge; or
- (c) his possession of the principal work and extracts from the principal work constitute not more than 20% of the principal work concerned.

8. Some other related and consequential amendments are proposed. The phrase "in connection with" is removed from the expression "for the purpose of, or in the course of, or in connection with any trade or business" where it appears in the Copyright Ordinance. The term "business" is defined to include business conducted otherwise than for profit.

Public Consultation

9. The Administration issued a document entitled "Review of Certain Provisions of the Copyright Ordinance" (the Consultation Paper) for a two-month consultation in October 2001. Proposals were drawn up in March 2002 which the Administration intended to implement by stages.

Consultation with LegCo Panels

10. The Panel on Commerce and Industry was briefed and consulted several times. At its meeting on 12 November 2001, the Administration briefed the Panel on the Consultation Paper. The Panel met with deputations at its meeting on 10 January

2002 to solicit their views on the Consultation Paper. The Administration reported the outcome of the consultation and consulted the Panel on the legislative proposals at its meetings on 4 February and 8 July 2002. At the meeting on 8 July 2002, the Administration briefed the Panel on the draft Copyright (Amendment) Bill 2002 (LC Paper No. CB(1)2146/01-02(05)). Members urged the Administration to expedite the drafting of the legislative proposals and to listen to the views of the public and the industry before introducing the Bill.

11. It is noted that the removal of end-user liability in relation to parallel-imported copyright works (clauses 2 and 3 of the Bill) had not been included in the draft Bill for members' discussion at its July 2002 Panel meeting. The movie, music and publishing industries have raised objections to liberalising parallel importation at the time of the 2001 consultation exercise.

Conclusion

12. A Bills Committee should be formed to scrutinize the Bill in detail since some of the policies, for example the issue of parallel-importation, are likely to remain controversial.

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