

立法會
Legislative Council

LC Paper No. CB(1)2052/04-05
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by the Administration)

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Panel on Commerce and Industry

Minutes of meeting
held on Tuesday, 21 June 2005, at 4:00 pm
in Conference Room A of the Legislative Council Building

- Members present** : Hon WONG Ting-kwong, BBS (Deputy Chairman)
Dr Hon LUI Ming-wah, JP
Hon CHAN Kam-lam, JP
Hon SIN Chung-kai, JP
Hon Vincent FANG Kang, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
- Member attending** : Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
- Member absent** : Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP (Chairman)
- Public officers attending** : Agenda Item IV
Mr John TSANG, JP
Secretary for Commerce, Industry and Technology

Miss Denise YUE, JP
Permanent Secretary for Commerce, Industry and
Technology (Commerce and Industry)

Mr Tony MILLER, JP
Permanent Representative of the Hong Kong Special
Administrative Region of China to the World Trade
Organization

Miss Jacqueline WILLIS, JP
Commissioner for Economic and Trade Affairs, USA

Mrs Carrie LAM, JP
Director-General, Hong Kong Economic and Trade
Affairs, London

Mr Andrew WONG, JP
Special Representative for Hong Kong Economic and
Trade Affairs to the European Communities, Brussels

Ms Margaret FONG
Director-General, Hong Kong Economic and Trade
Affairs, Washington

Mr Alex FONG
Principal Hong Kong Economic and Trade
Representative, Tokyo

Miss Sarah WU
Director, Hong Kong Economic and Trade Affairs, New
York

Mrs Jenny WALLIS, JP
Director, Hong Kong Economic and Trade Affairs,
Sydney

Mr Peter LEUNG
Director, Hong Kong Economic and Trade Affairs,
Guangdong

Ms Doris CHEUNG
Director, Hong Kong Economic and Trade Affairs, San
Francisco

Mr K K LAM
Director, Hong Kong Economic and Trade Affairs,
Singapore

Mr Bassanio SO
Director, Hong Kong Economic and Trade Affairs,
Toronto

Agenda Item V

Miss Mary CHOW
Deputy Secretary for Commerce, Industry and
Technology (Commerce and Industry)

Ms Priscilla TO
Principal Assistant Secretary for Commerce, Industry
and Technology (Commerce and Industry)

Mr Peter CHEUNG, JP
Deputy Director of Intellectual Property

Mr Y K TAM, C.M.S.M.
Senior Superintendent
Intellectual Property Investigation Bureau Customs and
Excise Department

Clerk in attendance : Miss Polly YEUNG
Chief Council Secretary (1)3

Staff in attendance : Miss Anita HO
Assistant Legal Adviser 2

Ms Debbie YAU
Senior Council Secretary (1)1

Ms Sharon CHAN
Legislative Assistant (1)6

Action

The Deputy Chairman explained that the Chairman was on leave and he would chair the meeting.

I Confirmation of minutes and matters arising

LC Paper No. CB(1)1794/04-05 -- Minutes of meeting held on
17 May 2005

2. The minutes of the meeting held on 17 May 2005 were confirmed.

II Paper issued since last meeting

3. Members noted that no information paper had been issued since the last meeting.

III Date and items for discussion for next meeting

LC Paper No. CB(1)1792/04-05(01) -- List of outstanding items for discussion

LC Paper No. CB(1)1792/04-05(02) -- List of follow-up actions

4. Members noted that the Administration had proposed to discuss the item on "Draft Copyright (Prescription of Copyright Registers) Regulation at the next meeting to be held on 19 July 2005.

IV Reports by Heads of Hong Kong Economic and Trade Offices

LC Paper No. CB(1)1792/04-05(03) -- Information paper provided by the Administration

LC Paper No. CB(1)1792/04-05(04)) -- Extract of minutes of meeting of the Panel on Commerce and Industry held on 12 July 2004

5. The Secretary for Commerce, Industry and Technology (SCIT) said that it had been an ongoing practice for the various Heads of the Hong Kong Economic and Trade Offices (ETOs) to report their work to the Panel on their return to Hong Kong each year. SCIT then invited the Permanent Representative of the Hong Kong Special Administrative Region of China to the World Trade Organization (PRG), the Commissioner for Economic and Trade Affairs, USA (C, USA), and the Special Representative for Hong Kong Economic and Trade Affairs to the European Communities, Brussels (SREC) to brief the Panel on the major activities and the latest development in economic and trade related matters under their respective purview. Members noted that the full set of reports in respect of the 11 ETOs had been provided to Panel members vide LC Paper No. CB(1)1792/04-05(03).

Report on major areas of work of ETOs

6. On issues related to the World Trade Organization (WTO), PRG reported that over the past 12 months, the WTO had made some progress in the Doha Round of multilateral trade negotiations (also known as "Doha Development Agenda" (DDA)) and WTO members had reached agreement for continuing the DDA. They had also developed a common goal for achieving a substantive breakthrough by the WTO Sixth Ministerial Conference (MC6), to be held in

Hong Kong in December 2005, with a view to concluding the DDA negotiations by end 2006. Significant progress was expected in five areas, namely, agriculture, market access negotiations for non-agricultural products, services, rules and the development dimension. It was expected that the developing countries would be more willing to consider lowering the tariff for non-agricultural products after there was a total elimination of export subsidy for agricultural products. PRG said that the Geneva ETO had participated actively in the DDA negotiations. During the run-up to MC6, the Geneva ETO would continue to liaise closely with other WTO members, the WTO Secretariat, Geneva-based media and other organizations in the preparation of MC6.

7. C, USA reported that USA was one of the key trading partners of Hong Kong and the US ETOs had been monitoring closely the US Administration's foreign and domestic policies which might have implications for Hong Kong. She then gave an account on the US political landscape following the presidential and congressional elections in November 2004. On the trade front, the US Administration focused on lobbying Congress to pass Central America, Dominican Republic – United States Free Trade Agreement (CAFTA). On the economic front, she said that many Americans considered that China was responsible for the increasing trade deficits and job loss in US. The mood in Congress was for tougher action to be taken against China on a range of trade issues including Intellectual Property Rights enforcement, implementation of the WTO agreement and the Ren Min Bi (RMB) currency. It was believed that the passage of CAFTA would help ease the presently tense Sino-US commercial relationship. C, USA pointed out that the Washington ETO would continue to help foster US-Hong Kong commercial relations, facilitate bilateral trade consultations, assess and report on developments that would impact on Hong Kong's bilateral and multilateral trade and economic interests

8. SREC informed members that following the accession of ten new member states to the European Union (EU) with effect from 1 May 2004, the leaders of the EU member states had agreed on the new European Constitution at the end of 2004. They planned to ratify the Constitution by end 2006 after it had gained support from individual member states. However, consequent upon the negative reaction of the people of France and the Netherlands to the Constitution, the EU leaders had decided to defer the deadline for ratification of the Constitution until 2007 to allow further reflection by member states. On commercial relations, while China had developed closer ties with the EU, there were also an increasing number of trade disputes between them. The abolition of textile quota since 1 January 2005 had caused grave concern among certain EU member states, as well as the textiles and clothing industries of the EU. The European Commission (EC) had initiated investigation into safeguard actions in respect of nine categories of textile products, and taken out emergency safeguard action on two of them. Following talks between the EC and China, the latter had agreed to moderate the level of Chinese exports. The Brussels ETO was fully aware of the concerns of the Hong Kong textiles and clothing manufacturers and would closely monitor developments in this regard. It would assess the impact of the safeguard measures against textile imports from China and update

the Hong Kong textiles and clothing industries accordingly. For the next 12 months, the Brussels ETO would continue to liaise closely with trade officials from the EC and member states, and assess the EU position on various issues, with a view to facilitating constructive dialogue ahead of MC6 in December 2005.

9. Mr CHIM Pui-chung was concerned about the possible impact on Hong Kong of the most-favoured-nation (MFN) treatment, intellectual property (IP) rights protection and implementation of anti-dumping measures against China on local trade following the Mainland's accession to the WTO.

10. In response, PRG pointed out that the Mainland was entitled to MFN treatment on a permanent basis after its accession to the WTO. As a signatory to the Trade-related Aspects of Intellectual Property Rights Agreement and as a result of effective enforcement actions by the Custom and Excise Department, Hong Kong had gained good international reputation in terms of IP rights protection. On anti-dumping, PRG said that the Geneva ETO had strongly urged the developed economies to apply much stricter discipline to the use of this trade remedy. He pointed out that if these countries did not improve the rules for anti-dumping, developing countries might put in place drastic domestic legislation to retaliate against the arbitrary use of anti-dumping measures. As such, Hong Kong, the Mainland and a number of WTO members had put forward a number of proposals which sought to tighten and improve the disciplines of applying anti-dumping measures and to reduce trade discrimination. The Geneva ETO hoped to enlist support at the coming MC6 to put in place a more transparent mechanism on anti-dumping measures and to persuade developing economics to develop trade relations through negotiations.

Trade disputes

11. Noting the trade disputes between China and the US/EU on textiles and clothing as well as shoes, Mr CHIM Pui-chung pointed out that since these imports manufactured in China were much cheaper than local products, he enquired whether consumers in the US and EU countries would welcome a reduction in the import of China-made products.

12. In response, C, USA remarked that "made in China" labels were very visible in the US. Modest economic growth, slow job creation and loss of manufacturing jobs had created tensions in US-China relations. The US Administration had to deal with its domestic constituents including the US domestic textile and clothing manufacturers, which was a sun set industry with waning political clout in the last few years. However, their lobbying against China-made products had started to gain new momentum since 2004. This was probably due to the abolition of textile quota with effect from 1 January 2005, which prompted worries in the US about the impact of competitively priced China products on local manufacturing industries and the increase in job loss. C, USA advised that the last few months had seen increasing pressure from the Congress calling for tougher action by the US Administration to address the

concerns of the textile and clothing industries. Notwithstanding that some analysts and economists had attributed the loss of domestic manufacturing jobs to improved efficiency in the sectors concerned, many remained of the view that China had posed a threat to the local economy because of its competitively priced products. While so far, such sentiment had not impacted on Hong Kong, C, USA said that the US ETOs would continue to monitor developments closely.

13. SREC said that EU member states had shown similar responses to the controversial issue of imports from China. He said that some major EU member states, such as France, Germany and Italy had experienced an economic downturn leading to a loss of local manufacturing jobs. Many had attributed the situation to the impact of competitively-priced imports from China. The affected industries had made petitions to their governments against the imports of clothing and textile products as well as shoes made in China, thus asserting certain pressure on their governments to take actions. SERC said that the Brussels ETO would keep in view economic and political developments in Europe and assess the impact on Hong Kong.

14. Notwithstanding that Hong Kong did not have direct trade disputes with the US/EU, Mr SIN Chung-kai was concerned about the indirect impact of Sino-US or Sino-EU conflicts on Hong Kong and sought the views of the Heads of ETOs on such possible impact in the next two years.

15. In response, PRG pointed out that following Hong Kong's transition to a service economy, the chance of its exports being hit by Sino-US or Sino-EU trade disputes had lowered significantly. However, since Hong Kong was the gateway to the Mainland, any trade disputes between China and its trading partners would likely affect the transshipment of the products concerned in Hong Kong. Apart from engaging in multilateral negotiations which was one of the best strategies to counteract the negative impact of China-related trade disputes on Hong Kong, the Geneva ETO had strived to improve the rules of anti-dumping and to put in place an effective dispute settlement system to safeguard the interests of smaller economies such as Hong Kong.

16. On US-China trade disputes, C, USA pointed out that all along, the US ETOs had worked closely with the US Administration and Congress to ensure that trade sanctions against the Mainland would not spill over onto Hong Kong. If historical trends were an indicator, some comforts could be drawn from the past debates on the renewal of MFN/Normal Trade Relations (NTR) for China. The negative impact of non-renewal on Hong Kong had provided a convenient cover for members of the Congress to support the renewal of MFN/NTR.

17. Given that the EU had become one of the key trading partners of China, SREC pointed out that trade-related conflicts between the two sides might become inevitable following the growth in trading activities. While Hong Kong was not directly involved in such disputes, SREC said that the Brussels ETO would monitor the progress of the development in Sino-EU trade relations and apprise Hong Kong manufacturers of any actions by the EU which might affect

them.

Textile talks with the US

18. Mr Andrew LEUNG thanked the Commerce, Industry and Technology Bureau and the ETOs under its purview for their services and assistance, such as in keeping the Hong Kong textiles and clothing industries abreast of the latest development in any safeguard actions taken by the EU and US. He said that notwithstanding these measures were targeted at the Mainland, they were highly relevant to Hong Kong businessmen engaged in textile and clothing production in the Mainland. In view that the ratification of the European Constitution had experienced setbacks, Mr LEUNG was concerned whether this would further enhance EU's protectionism and aggravate Sino-EU trade relations.

19. In response, SREC advised that overall competence on trade matters had been transferred to the EC. However, some member states such as France, which had voted against the European Constitution, were mainly worried about local unemployment. As such, these member states had urged the EU to adopt more restrictive measures against Chinese imports. However, it was the hope of the EC to resolve such conflicts through bilateral negotiations.

20. Mr Andrew LEUNG expressed dismay at the sudden announcement of the US government on its decision to impose restriction on seven types of China's textile products until end 2005. As far as he understood, the Mainland Ministry of Commerce (MOC) was still negotiating with the US side via video-conference last week. It was generally believed that the US Congress would not pursue the matter until after it had considered and passed the bill for CAFTA. While the impact of the newly announced safeguard quota was yet to be assessed, Mr LEUNG was gravely concerned about the further impact on Hong Kong if the US Administration continued to accept the petitions of its domestic industries and proceed to impose or extend restrictive quotas on textile products unilaterally. To achieve a more equitable and certain arrangement, Mr LEUNG hoped that the US could reach an agreement with China on its textile exports similar to the one recently entered into by the EU and China.

21. In response, C, USA remarked that discussion was still underway even at the previous night. She pointed out that the US-China Joint Commission on Commerce and Trade (JCCT) would be meeting soon and it was still possible for the two sides to reach an agreement in the same way as the EU and China. Meanwhile, the Washington ETO would continue to keep in view developments.

22. Mr Andrew LEUNG considered that there would unlikely be any change to the safeguard quotas imposed by the Committee for the Implementation of Textile Agreements (CITA) on certain textile and clothing products made in China. He reiterated his view that if the conflicts between the US and China continued or intensified, it would be inevitable that Hong Kong's textile and clothing trades would be adversely affected. Mr LEUNG urged C, USA to monitor the matter and apprise the local industries of the latest development

accordingly.

23. Noting that the US Congress would consider the CAFTA bill before its summer recess, Mr Vincent FANG anticipated that if the bill was passed, it would help improve the US-China trade relations because the bill would help stimulate job opportunities in the manufacturing sector, thereby relieving some of the domestic dissatisfaction against China and its imports to the US.

24. In response to Mr Vincent FANG's question regarding the possibility of the imposition of more safeguards, C, USA remarked that the mock mark-up last week in the Senate and the House suggested that the CAFTA bill would be passed. Whether the US Administration would continue to support the domestic and clothing industries' safeguard petitions would hinge in part on whether the US Administration considered that it had provided sufficient sweetness to its domestic textile lobbying in return for the relevant states' vote for the bill. There were also other milestones which should be watched carefully because they might affect the US-China negotiations over textile quotas, viz. whether China would raise its objection against the imposition of safeguards to the WTO, and whether more importing countries would join the US in setting limits on China's textile products. C, USA believed that the upcoming JCCT Meeting and the September visit of President HU Jin-tao to the US could potentially have a positive effect on the outcome of the textile trade dispute. C, USA pointed out that textile negotiations only formed part of the US-China commercial relations and IP rights protection was of greater concern to the US.

Investment and free trade promotion

25. On investment and free trade promotion, Mr Jeffrey LAM relayed the views of the industries that the ETOs should be more proactive in promoting the Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA) to foreign investors, in particular those small and medium enterprises (SMEs) in smaller cities. Mr LAM also urged the ETOs to prepare for promoting Hong Kong as a centre of asset management to tie in with the passage of the Revenue (Abolition of Estate Duty) Bill 2005. Mr LAM pointed out that the abolition of estate duty would help encourage foreign investors to hold assets in Hong Kong and induce foreign investment. This would also facilitate the further development of Hong Kong asset management services and create more employment opportunities.

26. On the promotion of CEPA, the Permanent Secretary for Commerce, Industry and Technology (Commerce and Industry) (PSCI) highlighted that since the announcement of the CEPA framework in mid 2003, the ETOs, Invest Hong Kong and the Hong Kong Trade Development Council (TDC) had spared no effort in promoting to foreign investors the business opportunities brought about by CEPA. These agencies would further focus promotion work on foreign SMEs which were not well-versed about the situation in Hong Kong and Mainland China. Regarding the proposed abolition of estate duty, PSCI undertook to obtain relevant information from the Financial Services and the

Treasury Bureau in order that the ETOs could help promote Hong Kong as an international asset management centre following passage of the Bill.

27. Mr Vincent FANG enquired whether Hong Kong staff engaged by Mainland companies should contact the ETOs or TDC for assistance or seek consular protection when they encountered immigration-related problems during business trips overseas.

28. In reply, PSCI advised that there was a standing arrangement for TDC to publish the Immigration Department's 24-hour hotline service in all its documents inviting participation of overseas exhibitions. Hong Kong residents who encountered immigration-related problems while travelling overseas might seek assistance from the hotline service. Moreover, Chinese embassies and consulates abroad were responsible for protecting the legal rights and interests of Chinese citizens outside China. In addition, the eleven ETOs would also provide assistance to Hong Kong residents travelling outside Hong Kong as necessary but the city/country coverage of ETOs was quite limited.

Staffing establishment

29. In reply to Mr CHIM Pui-chung on the present ranking of the post of the Director-General of the London ETO (DG/London ETO), DG/London ETO pointed out that all along, the creation of directorate posts had to be approved by the Finance Committee via its Establishment Subcommittee. She then gave a historical account on the change in responsibilities and staff establishment of the London ETO since its inception about 50 years ago. She said that the establishment of the London ETO had once reached 118 at its peak while at present, the London ETO had an establishment of 20 staff. DG/London ETO further stressed that the establishment size of ETOs and the level of ranking of their Heads were subject to ongoing review.

V Proposals on various copyright-related issues

LC Paper No. CB(1)1792/04-05(05) -- Information paper provided by the Administration

LC Paper No. CB(1)1819/04-05 -- Updated background brief on review of certain provisions of Copyright Ordinance prepared by the Secretariat

30. At the invitation of the Deputy Chairman, the Deputy Secretary for Commerce, Industry and Technology (Commerce and Industry) (DSCIT(CI)) briefed members on the background and results of the public consultation on the review of certain provisions of the Copyright Ordinance (CO) (Cap 528) held from mid-December 2004 to mid-February 2005, and introduced the Administration's preliminary proposals as set out in its paper

(CB(1)1792/04-05(05)).

Business end-user criminal liability

31. Mr Ronny TONG was very concerned that the proposed criminal liability for copying/distribution of copyright infringing printed works might impede the free flow of information in the community, hinder academic researches as well as pose an unnecessary threat to the general users. He considered that the proposed measure was lopsided in favour of copyright owners whose interests were already protected as they were entitled to seek civil remedies against the copyright infringing parties. As such, Mr TONG urged that apart from the four categories of copyright works, any proposed extension of the scope of criminal liability should be limited to large-scale business-related infringing acts. He referred to the Administration's proposals (paragraph 10 of CB(1)1792/04-05(05)) that the infringing acts would attract criminal sanction if they resulted in financial loss to the copyright owner and that the Administration intended to specify a numerical threshold in the law under which the infringing acts would not attract criminal liability ("safe harbour"). Mr TONG held the view that the extent of financial loss which attracted criminal sanction should be quantified or clearly specified in law. He said that such loss must be "substantial" because it was unreasonable to criminalize a person whose infringing act only resulted in a small financial loss to the copyright owners. He also urged that the "safe harbour" threshold should be equitably set and clearly stipulated. Mr TONG was particularly concerned about the vulnerability of the general public in breaking the law inadvertently under the future regulatory regime.

32. In response, DSCIT(CI) took note of Mr TONG's concern which was among the views expressed by some deputations during the consultation. She highlighted that in drawing up the proposal, it was the Administration's intention that infringing acts in relation to copyright works in newspapers, magazines, periodicals and books would attract criminal sanction only if the acts were done on a significant scale and some numerical thresholds would be specified in the law. However, in reply to Mr TONG, DSCIT(CI) said that for the time being, the Administration did not have a preliminary view on the thresholds to be adopted and would continue discussion with all concerned stakeholder groups on the detailed formulation of the numerical thresholds for the proposed offence.

33. Noting that the Administration had proposed to exempt non-profit making educational establishments and those subvented by the Government from the proposed criminal provision to facilitate teaching, Mr Ronny TONG considered that the same exemption should be given to all non-profit making non-government establishments. Echoing Mr TONG's view, the Deputy Chairman further opined that all infringing acts not in connection with commercial business should be exempt from the proposed criminal sanction since all such acts were not commercially oriented and already subject to civil liability. DSCIT(CI) took note of the members' views for consideration.

34. Mr Ronny TONG enquired about the resource implications on the enforcement authority and on the courts if the proposed provisions relating to business end-user criminal liability were enacted and implemented. In reply, DSCIT(CI) stressed that the proposed offence was targeted at significant infringing activities only. The Senior Superintendent, Intellectual Property Investigation Bureau of the Customs and Excise Department supplemented that it was difficult to ascertain the cost implications at this stage, pending a decision on the level of numerical thresholds to be adopted for the proposed offence.

End-user liability associated with parallel importation of copyright works

35. Noting the far-reaching implications of the Administration's preliminary proposals on the business sectors and community at large, Mr Andrew LEUNG called on the Administration to finalize its business end-user criminal liability proposals with caution. He considered that the objective of CO was to protect intellectual property rights and not the business interests of the related parties of the copyright owners such as the authorized dealers or retailers of the copyright works. He opined that the proposed directors' liability would lead to a reversal in burden of proof and it was not fair to incorporate directors. He also pointed out that given the technological advancement nowadays, users could acquire a piece of copyright work such as a movie, television drama or musical recording by downloading it lawfully from an overseas website. Hence, Mr LEUNG was of the view that it was indeed unfair to impose business end-user possession criminal liability for a parallel imported movie, television drama or musical recording if the copyright work had been published for 18 months or less.

36. In response, DSCIT(CI) highlighted that all along, the subject of parallel imported copyright works was highly controversial. Copyright owners were adamantly against relaxing the existing restrictions on sale or removing all restrictions on the importation and use of parallel imports of copyright works by business end-users, maintaining that this would affect the potential local market for the copyright works concerned. Copyright work users however advocated for the removal of all restrictions on parallel importation of copyright works. On balance, the Administration now proposed to retain all existing restrictions on parallel imports of copyright works but to remove criminal and civil liability for the importation and use of parallel imports of copyright works by educational establishments and libraries for their education and library uses. In this connection, Mr Andrew LEUNG did not consider it appropriate that educational establishments and libraries should be differentiated from general copyright work users for the purpose of the proposed removal of criminal and civil liability for the importation and use of parallel imports of copyright works.

37. Mr Jeffrey LAM shared Mr LEUNG's view. He noted that copyright owners had once advised that restricting parallel importation of a copyright work which had been published for 18 months or less would have little or no effect on the supply and price of the copyright work concerned. However, he had gathered from small and medium enterprises that this had not been the case. For the purpose of clarification, Mr LAM sought information from the

Administration on the supply and price of copyright works before and after the implementation of the existing restrictions on parallel imports of copyright works.

Admin

38. In this regard, DSCIT(CI) advised that the Administration did not have access to information about the agreements between copyright owners and their authorized dealers eg, the price range and the kind of copyright items covered by exclusive licensing arrangement. Hence, it was not possible for the Administration to provide the requested information. However, DSCIT(CI) said that the Administration had received informal feedbacks from certain business users that the price of some computer software was lowered consequent to the enactment of the Copyright (Amendment) Bill 2001 which lifted all the restrictions on parallel imported copies of computer programmes. DSCIT(CI) stressed that parallel importation had always been a controversial subject requiring a fine balance to be struck between the interests of copyright owners and those of users of copyright works. She noted members' concern and said that the Administration would be prepared to consider whether or not the existing restriction on parallel imports of copyright works should be further relaxed.

Admin

39. Mrs Selina CHOW recalled the divergent views expressed on the restrictions associated with parallel imported copies when the Copyright Bill 1997 was discussed in the Council. While the copyright owners and exclusive licensees had then stated that the proposed criminal liability would not reduce the supply and drive up the price of imported items of copyright works, the Consumer Council had submitted that the proposed restrictions (notably civil and criminal liabilities) would have the effect of limiting the timely supply of these items of copyright works and pushing up their prices for the consumers. Mrs CHOW was concerned whether the Administration had reviewed the impact of imposing criminal liability on the dealing in or import of a parallel imported copyright work after it had been published for 18 months or less. She urged the Administration to consider shortening the existing 18-month period during which parallel imported copies of copyright works might attract criminal liability so that consumers would be able to acquire overseas copyright works much earlier and at more competitive prices. Noting Mrs CHOW's concern, DSCIT(CI) said that the Administration would consider the suggestion.

Rental rights for films and comic books

40. Noting the Administration's report that according to the film and comic book industries, they sustained a revenue loss of some \$220 million and \$250 million respectively due to the absence of rental rights, Mr Vincent FANG considered that the figures might have been exaggerated. He expressed his view that rental rights for films and comic books should not be introduced so that the general public, in particular the under-privileged groups, could enjoy newly released films and comic books.

41. In response, DSCIT(CI) explained that rental rights referred to the rights of a copyright owner (enforceable by civil action) to authorize or restrict the

commercial rental of copies of his copyright works. Currently, rental rights for copyright owners of computer programs and sound recordings were provided for under the CO and civil remedies were available for the owners. In the light of the industries' estimated impact on their potential markets, the Administration now proposed to introduce rental rights also for films and comic books and to provide civil remedies for violation of these rights. However, to ensure that the existing film and comic book rental shops could carry on their current business lawfully after the introduction of the new rights, it was proposed that the rental rights provisions should not commence operation until a reasonable amount of copyright items available in the existing rental market had been covered by rental licensing schemes.

Legislative timetable

42. Mr Ronny TONG enquired about the legislative timetable. Noting that copyright-related issues carried wide social implications affecting many sectors of the community, as evidenced by the fact that the Administration had received over 400 submissions from organizations and individual members of the public, the Deputy Chairman urged the Administration to introduce the amendment bill as early as possible, preferably at the beginning of the next legislative session, so as to allow sufficient time for scrutiny by the relevant bills committee before the expiry of the Copyright (Suspension of Amendments) Ordinance 2001 in end July 2006.

Admin

43. In response, DSCIT(CI) said that subject to members' views on its preliminary proposals, the Administration would proceed to draft the amendment bill. In the meantime, the Administration would continue to actively discuss the details of the proposals with all stakeholders concerned and refine them in the light of their comments. DSCIT(CI) took note of the Panel's concern that drafting of the bill should be expedited. To keep members posted of developments, the Administration would brief the Panel again in October 2005 on further details of the Administration's proposals after further discussion with various stakeholders.

Meeting with deputations by the Panel

44. Mr SIN Chung-kai opined that the Administration could commence drafting the amendment bill on the basis of its preliminary proposals. In view of the very tight legislative timeframe and recapping his earlier view that the Panel should invite public views when the Administration's specific proposals were known, Mr SIN suggested that the Panel should arrange to meet with deputations in July 2005 and receive their views. This would hopefully help expedite or facilitate future scrutiny of the Administration's legislative proposal. Mr Andrew LEUNG agreed with Mr SIN's suggestion.

45. The Deputy Chairman suggested that the Panel should seek views on any of the Administration's proposals (a) to (p) as summarized in Annex C of the Administration's paper (CB(1)1792/04-05(05)) and /or other related issues and

meet with interested parties at the next Panel meeting. In anticipation that a large number of deputations might take part in the discussion, the Deputy Chairman further suggested to extend the meeting to 6:30 pm for this sole agenda item. Members agreed. As the subject in question was of widespread public concern and had an impact on the community at large, members agreed that in line with the usual practice, a general notice should be posted on the web site of the Council to invite all interested parties to submit views.

(post-meeting note: The Panel has posted a general notice on the web site of the Council on the Internet on 22 June 2005 to invite submissions. It has also written to the 18 District Councils. The deadline for submissions is 11 July 2005.)

VI Any other business

46. Members noted that in line with the practice in the past years, the Panel would present a report on its work in the 2004-05 session to the Council on 6 July 2005 in accordance with Rule 77(14) of the Rules of Procedure. The Clerk would circulate the draft report to Panel members for endorsement shortly. Members agreed to authorize the Chairman and the Clerk to revise the contents of the report in the light of subsequent developments, if any.

Clerk

47. In connection with agenda item IV, Mr Andrew LEUNG considered that since the Panel meeting provided an opportunity for the Heads of the various ETOs to report their work to members once in a year, more time should be allocated for this agenda item in future.

48. There being no other business, the meeting ended at 6:10 pm.

Council Business Division 1
Legislative Council Secretariat
18 July 2005