

Bills Committee on Copyright (Amendment) Bill 2006

Term of Copyright Protection

Purpose

At the Bills Committee meeting on 23 October 2006, Members requested the Administration to provide information on the overseas practices and developments regarding the term of copyright protection. This paper provides the said information for Members' reference.

Term of Copyright Protection in Hong Kong

2. Copyright protection does not last forever. There is a statutory period during which the protection is available (known as "the term of copyright protection"). When the term of copyright protection expires, the acts originally restricted by copyright (e.g. to make copies of a copyright work, or to perform, show, or play a work in public) are no longer restricted. In other words, the acts can be done without the need to seek authorization from the concerned copyright owners (also known as "works in the public domain").

3. Under the existing Copyright Ordinance (Cap 528), the term of copyright protection of a copyright work generally expires 50 years after the last calendar day of the year of death of the author of the work (i.e., the term of protection is during the life of the author and for a period of 50 years after his death). For works in respect of which the term of copyright protection cannot be calculated on the basis of the author's life, the term of copyright protection expires 50 years from the end of the year of publication or the year of making the work. The term of copyright protection that Hong Kong offers is in compliance with the requirements laid down in the Agreement of Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement)¹ of the World Trade Organization.

Situation in other jurisdictions

4. In the US, the term of copyright protection for works created before 1 January 1978 is 28 years which may be renewed for a further term of 67 years (i.e. 95 years in total). Copyright works created on or after 1 January 1978 generally have a term of copyright protection which expires (i)

¹ According to the TRIPS Agreement, the term of protection of a copyright work should be no less than 50 years after the last calendar day of the year of death of the author of the work or (for a work of which the term cannot be calculated on the basis of the author's life) 50 years from the end of the year of publication or the year of making the work.

70 years after the year of death of the author of the works, or (ii) in the case of copyright works of corporate authorship, 95 years from publication or 120 years from creation whichever is the earlier.

5. Other major trading partners which also have a term of copyright protection of 70 years (post the year of death of the author or post the year of publication of the work) include the European Union, Singapore, Australia² and Japan. According to a copyright owners' association, a number of other countries have also migrated to such a position by extending the term of copyright protection by 20 years (e.g. Paraguay, Peru, Israel, Jordan, Mexico, Uruguay, United Arab Emirates, Sri Lanka, Cyprus, Chile, Brunei, Cambodia and Colombia).

6. When the term of copyright protection was extended in the above jurisdictions, the extension was generally retroactive, namely, it applied to existing works the copyright of which had not expired. The extension did not normally apply to works already in the public domain³. Some of the jurisdictions did not extend the term of copyright protection to sound recordings, broadcasts and/or cable programmes⁴.

7. The term of copyright protection available in many economies remains to be 50 years post the year of death of the author or post the year of publication of the work. These include Canada, New Zealand, the Mainland, South Korea, Indonesia, Malaysia, the Philippines, Thailand and Vietnam.

Concluding Remarks

8. A change to the term of copyright protection is liable to entail significant implications. Apart from weighing the possible impact on the further development of our creative industries, we have to take into account the interests of copyright owners and the impact that an extension in the term of copyright protection may have on the availability of copyright works in the

² The extension of the term of copyright protection by 20 years in Australia and Singapore is a requirement for the implementation of the US Free Trade Agreement.

³ An exception is found in the UK legislation. The extension has the effect of reviving the copyright of works which are already in the public domain in the UK, but are still protected elsewhere in the EU. It is our understanding that the UK legislation was required to implement the relevant European Commission Directive which requires the extended term of protection to apply to all works which are protected in at least one Member State on the effective date of the Directive.

⁴ For instance, the European Commission has adopted a Directive in harmonizing the term of protection of copyright for the Member States of the European Union. Among others, the term of copyright protection for authors is extended to 70 years. However, such extension does not cover sound recordings, broadcasts and/or cable programmes for which the term of copyright protection remains unchanged, i.e. 50 years.

public domain. Thorough public consultation should be conducted before any proposed change is to be pursued. We will continue to keep in view the international developments and consider raising this subject for public consultation as and when appropriate.

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