

立法會
Legislative Council

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**Paper for the House Committee Meeting
on 31 March 2006**

**Legal Service Division Report on
Copyright (Amendment) Bill 2006**

I. SUMMARY

- 1. Objects of the Bill** To amend the Copyright Ordinance (Cap. 528) to –

 - (a) enhance copyright protection to copyright owners;
 - (b) improve the copyright exemption regime for copyright users; and
 - (c) make some other miscellaneous amendments.

- 2. Comments** The major proposals in this Bill include -

 - (a) imposing new criminal liability on business end-users and on directors and partners;
 - (b) imposing new civil liability against violation of rental rights for films and comic books;
 - (c) liberalizing the use of parallel imported copyright work;
 - (d) fair dealing exemption for education and public administration purposes; and
 - (e) imposing new criminal liability and civil remedy relating to circumvention of technological measures.

- 3. Public Consultation** The Administration had discussed with the relevant stakeholder groups over two years and held a public consultation exercise on copyright proposals but given the diametrical nature of the interests of the copyright owners and users, certain areas remain a point of controversy.

- 4. Consultation with LegCo Panel** The Panel on Commerce and Industry had discussed the Administration's proposals at its meetings on 21 June, 19 July and 15 November 2005. Members considered that many of the issues would require careful study.

- 5. Conclusion** Some of the legislative proposals introduced by this Amendment Bill are controversial and affect the community at large. It is recommended that a Bills Committee be formed to scrutinize the Bill in detail.

II. REPORT

Objects of the Bill

The objects of the Bill are to amend the Copyright Ordinance (Cap. 528) (“the Ordinance”) so as to-

- (a) enhance copyright protection to copyright owners by imposing new criminal and civil liabilities;
- (b) make the copyright exemption regime for copyright users more flexible by improving the existing permitted acts and by providing new permitted acts; and
- (c) make some other miscellaneous amendments to improve the enforcement and the operation of the Ordinance.

LegCo Brief Reference

2. File Ref.: CIB CR 07/09/16 issued by the Commerce and Industry Branch of the Commerce, Industry and Technology Bureau on 16 March 2006.

Date of First Reading

3. 29 March 2006.

Comments

4. Copyright is a property right conferred by statute to the author of certain literary, dramatic, musical or artistic works such as books, computer programs, sound recordings, films, broadcasts, cable programmes, drawings, plays and musical compositions. An owner of a copyright (i.e. the author or his assignee) essentially has the exclusive right to copy, sell, distribute, import, perform, broadcast or deal in his work for a specified period. Any person who uses the owner’s copyright without the owner’s consent may attract criminal or civil liabilities unless his use of the copyright is permitted by statute.

5. This Amendment Bill introduces a package of legislative proposals to amend the Ordinance. On the one hand, it enhances copyright protection to the copyright owners and on the other hand, it improves the copyright exemption regime for copyright users. Miscellaneous amendments are also made to improve the enforcement and operation of the Ordinance.

6. On enhancing copyright protection, the main proposals include the following -

(a) *Business end-user criminal liability for possession of infringing copies of four categories of works*

Under the Copyright (Suspension of Amendments) Ordinance 2001 (Cap. 568) (“the Suspension Ordinance”), the scope of the business end-user criminal liability is restricted to possession of infringing copies of four categories of works – computer programs, movies, television dramas and musical recordings. This existing scope is to be incorporated into the Ordinance (proposed section 118(2A) in clause 22(3)) and the Suspension Ordinance is to be repealed (clause 62)*. The business end-user possession criminal liability is not to apply to certain professionals such as legal professionals or persons providing investigation service (proposed new section 118(2E) in clause 22(3)). Also, a statutory defence is provided to employees (proposed section 118(3A) in clause 22(6)).

(b) *Business end-user criminal liability for distribution of infringing copies of printed works*

A new business end-user criminal offence of making for distribution or distributing infringing copies of a book, a magazine, a periodical or a newspaper on a regular or frequent basis is created. This criminal offence is not to apply to non-profit making or Government subvented educational establishments. Also, it is not to apply if the extent of infringement does not exceed a numeric level to be prescribed by way of regulation by the Secretary for Commerce, Industry and Technology (proposed new section 119B in clause 24). The proposed numeric level (“safe harbour” perimeters) is at Annex C to the LegCo Brief. A statutory defence is also provided to employees (proposed section 119B(10) in clause 24).

(c) *Directors’ or partners’ criminal liability*

A new criminal offence is to be created against the director(s) or partner(s) who is responsible for the internal management of a body corporate or partnership if that body corporate or partnership has done an act attracting the business end-user criminal liability unless he can prove that he did not authorize that act (proposed section 118 (2F) in clause 22(4) and proposed section 119B (6) in clause 24).

* The Suspension Ordinance is to cease to have effect on 31 July 2006. The Administration has indicated that depending on the progress of discussion at the Bills Committee, the Administration may need to seek the Legislative Council’s approval of another extension in the validity of the Suspension Ordinance.

(d) *Civil remedy against violation of rental rights for films and comic books*

A new civil liability against any person who offers films or comic books for commercial rental to the public without the authorization of the copyright owners is imposed (clause 4).

(e) *Criminal liability and civil remedy relating to circumvention of effective technological measures*

Subject to some exemptions, a new criminal offence against any person who is engaged in commercial dealing of circumvention tools or who provides circumvention services in a circumvention business is created. A new civil liability against any person who circumvents a technological measure (i.e. access control measures or copy-protection measures) used for copyright protection is also imposed (clauses 55 and 56).

(f) *Rights and civil remedies in respect of unlawful acts to interfere with rights management information*

Copyright owners and their exclusive licensees are conferred the rights to seek civil remedies against any person who tampers with rights management information attached to copyright works (clause 57).

(g) *New moral rights of a performer*

New civil liability against any person who infringes the moral rights of a performer of a live aural performance or a performance fixed in a sound recording is imposed (clause 53).

7. On copyright exemption, the Ordinance sets out specific permitted acts for users. In this Amendment Bill, a more general “fair dealing” exemption provision for some users and improvements to the specific permitted acts are introduced. The main proposals include the following -

(a) *“fair dealing” for education and public administration purposes*

New exemption provisions for fair dealing with a work for the purposes of education is introduced (clauses 12 and 48). A provision which provides that “fair dealing with a work by the Government, the Executive Council, the Legislative Council, the Judiciary or any District Council for the purposes of efficient administration of urgent business does not infringe the copyright in the work or, in the case of a published edition, in the typographical arrangement” is also introduced (proposed section 54A(1) in clause 16). In determining whether any dealing with a work is fair dealing, the court shall take into account some non-exhaustive factors such as the purpose and nature of the dealing, the nature of the work, the amount

and substantiality of the portion dealt with in relation to the work as a whole, and the effect of the dealing on the potential market for or value of the work.

(b) *Liberalization in the use of parallel imported copyright work*

Under the existing Ordinance, it is a criminal offence to deal in, or to import otherwise than for private and domestic use, any parallel imported copyright work (except computer program) if the work has been published anywhere in the world for 18 months or less. It is proposed in this Bill that the criminal liability period be shortened from 18 months to nine months (clause 7(2)). It is also proposed that the civil and criminal liability associated with the importation and possession of parallel imported copies of copyright works by business end-users be removed. This removal does not apply to movies, TV dramas, musical sound recordings, and musical visual recordings acquired for showing or playing in public, unless the business end-user is an educational establishment or a specified library (proposed section 35B in clause 8 and proposed section 229A in clause 45).

(c) *New permitted act for persons with a print disability*

Specified bodies or persons with a print disability such as persons with blindness or visual impairment are permitted to make accessible copies (e.g. in the form of a Braille, large-print) of certain copyright works without infringing copyright (clause 11).

(d) *New permitted act for playing sound broadcast inside vehicles*

It is proposed that playing a sound broadcast inside a vehicle will not constitute copyright infringement (clauses 18 and 52).

8. Some miscellaneous amendments are also introduced and they seek to -

- (a) change the time limitation for prosecutions to 3 years counting from the date of commission of the offence (clause 26);
- (b) facilitate the proof of absence of licence from a copyright owner (clause 27(4) and (5));
- (c) clarify the particulars of the author that are to be stated in an affidavit under section 121 (clause 27(1) and (2)); and
- (d) enable the Chairman, Deputy Chairman and certain members of the Copyright Tribunal to sit singly in certain proceedings (clause 33).

9. Apart from some sections which will come into operation on a day to be appointed by the Secretary for Commerce, Industry and Technology, the Bill, if enacted, will come into operation on the day on which it is published in the Gazette.

Public Consultation

10. According to paragraph 52 of the LegCo Brief, the package of legislative proposals is drawn up after extensive discussions with the relevant stakeholder groups over two years and a public consultation exercise. “Given the diametrical nature of these interests of the copyright owners and users, it is inevitable that in certain areas (notably parallel importation, business end-user copying/distribution criminal liability and directors’/partners’ criminal liability), the appropriate degree of copyright protection and exemption/liberalization will remain a point of controversy that needs to be further debated and resolved at the Bills Committee stage.”.

Consultation with LegCo Panel

11. The Panel on Commerce and Industry discussed the Administration’s proposals (LC Paper CB(1)1792/04-05(05) and CB(1)260/05-06(03)) at its meetings held on 21 June, 19 July and 15 November 2005. There was considerable discussion on the proposed business end-user criminal liability and the need for balancing the interests of copyright owners and copyright users. A member expressed the view that the proposed amendments were inadequate for the protection of the interests of copyright owners. Some members expressed reservation on the proposed directors/partners’ criminal liability. They all considered that many of the issues would require careful study.

Conclusion

12. Some of the legislative proposals introduced by this Amendment Bill are controversial and affect the community at large. It is recommended that a Bills Committee be formed to scrutinize the Bill in detail.

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