

立法會
Legislative Council

LC Paper No. LS59/08-09

**Paper for the House Committee Meeting
on 8 May 2009**

**Legal Service Division Report on
Copyright (Amendment) Bill 2009**

I. SUMMARY

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| 1. Object of the Bill | To amend the Copyright Ordinance (Cap. 528) to provide for the circumstances in which section 119B(1) of the Ordinance (the copying and distribution offence) does not apply. |
| 2. Comments | The major proposals in this Bill are to provide that the copying and distribution offence does not apply in circumstances where- <ul style="list-style-type: none">(a) the making or distribution of infringing copies in relation to magazines, periodicals (other than specified journals) and newspapers does not, in terms of the number of infringing pages made or distributed, exceed the specified extent (500 A4-size pages within 14 days);(b) the making or distribution of infringing copies in relation to books and specified journals does not, in terms of the value of qualifying copies made or distributed, exceed the specified extent (\$6,000 within 180 days);(c) infringing copies are distributed through an intranet. |
| 3. Public Consultation | The Administration had extensive discussions with the relevant stakeholders over the past two years, including the Hong Kong Copyright Licensing Association and the Hong Kong Reprographic Rights Licensing Society. According to the Administration, both groups support the proposal and have urged for early action. |
| 4. Consultation with LegCo Panel | The Panel on Commerce and Industry had discussed the Administration's proposals at its meetings on 19 February and 16 December 2008. The Panel supported in principle the proposals. |
| 5. Conclusion | The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Members may wish to consider setting up a Bills Committee to consider the Bill in detail. |

II. REPORT

Object of the Bill

The object of the Bill is to amend the Copyright Ordinance (Cap. 528) (the Ordinance) to provide for the circumstances in which section 119B(1) of the Ordinance does not apply.

LegCo Brief Reference

2. File Ref.: CITB 07/09/22 issued by the Commerce, Industry and Tourism Branch of the Commerce and Economic Development Bureau on 22 April 2009.

Date of First Reading

3. 6 May 2009.

Comments

4. The Copyright (Amendment) Ordinance 2007 (Ord. No. 15 of 2007) was passed by the Legislative Council on 27 June 2007. Under section 119B(1) (which has not yet come into operation) of the Ordinance, as added by section 33 of Ord. No. 15 of 2007, a person commits an offence if he, for the purpose of or in the course of any trade or business and on a regular or frequent basis, without the licence of the copyright owner, makes for distribution or distributes an infringing copy of a copyright work in a printed form contained in a book, a magazine, a periodical or a newspaper resulting in a financial loss to the copyright owner (the copying and distribution offence). The Secretary for Commerce and Economic Development (SCED) is empowered to prescribe by regulation numeric limits within which the copying and distribution offence does not apply.

5. According to paragraph 5 of the LegCo Brief, the proposed numeric limits that have been agreed between the Administration and the stakeholders after extensive consultation are as follows:-

- (a) for newspapers, magazines and periodicals (excluding specified journals), a maximum of 500 A4-size pages embodying infringing copies of copyright works within any 14-day period; and
- (b) for books and specified journals, a maximum total retail value of \$6,000 within any 180-day period where the value of a book, an issue of a specified journal, or the whole of an article in an issue of a specified journal, would be counted towards the total retail value respectively when the user makes for distribution or distributes infringing copies of more than 25% of the number of pages of the book, or the issue of the specified journal, or makes for

distribution or distributes a complete copy of the article in the specified journal (even if it is not more than 25% of the pages of the issue of the specified journal).

6. When working on the draft regulation, the Administration was of the view that the above formulation of numeric limits might be inconsistent with the enabling provisions in sections 119B(3)(a), (19) and (20) of the Ordinance. For instance, the enabling provisions require that the numeric limits applicable to each type of copyright work should refer to both the number and the value of infringing copies, and the enabling provisions draw no distinction between copyright work contained in different types of printed work. Members may refer to paragraph 6 of the LegCo Brief for further details. Therefore, the Administration proposes to amend section 119B of the Ordinance and also to prescribe the numeric limits in a new schedule to the Ordinance.

7. The main provisions of the Amendment Bill are set out below:-

- (a) Clause 3 amends section 119B of the Ordinance to provide that section 119B(1) of the Ordinance does not apply in the circumstances set out in the new Schedules 1AA and 1AB to the Ordinance.
- (b) Clause 4 adds the new Schedules 1AA and 1AB to the Ordinance to provide for the circumstances in which section 119B(1) of the Ordinance does not apply. In particular-
 - (i) section 1 of the new Schedule 1AA defines certain expressions to be used in the Schedule;
 - (ii) sections 2 and 3 of the new Schedule 1AA provide that section 119B(1) of the Ordinance does not apply in circumstances where the making or distribution of infringing copies in relation to magazines, periodicals (other than specified journals) and newspapers, as well as books and specified journals, does not exceed the specified extent;
 - (iii) section 4 of the new Schedule 1AA provides for the calculation of the total number of infringing pages made or distributed in relation to magazines, periodicals (other than specified journals) and newspapers;
 - (iv) section 5 of the new Schedule 1AA provides for the determination of the value of qualifying copies made or distributed in relation to books;
 - (v) sections 6, 7 and 8 of the new Schedule 1AA provide for the determination of the value of qualifying copies made or distributed in relation to specified journals; and
 - (vi) the new Schedule 1AB provides that section 119B(1) of the Ordinance does not apply to distribution of infringing copies through an intranet.

8. Under section 2 of the proposed new Schedule 1AA, the copying and distribution offence does not apply to the distribution or the making for distribution by a person, within any period of 14 days, of infringing copies of magazines, periodicals (other than specified journals) or newspapers if the total number of infringing pages distributed or made by the person within that period does not exceed 500. It is noted that the total number of infringing pages is calculated on the basis of A4 size, and a detailed calculation method is stipulated in section 4 of the proposed new Schedule 1AA. In calculating the total number of infringing pages, if the infringing pages are smaller/larger than A4 size, the number of those infringing pages is adjusted downward/upward in proportion to the difference between the size of those infringing pages and an infringing page of A4 size. If the infringing pages embody an image that has been reduced/enlarged in size from the original image of the copyright work from which the infringing copy was made, the number of those infringing pages is adjusted upward/downward in proportion to the difference between the size of the reduced/enlarged image and that of the original image.

9. Under section 3 of the proposed new Schedule 1AA, the copying and distribution offence does not apply to the distribution or the making for distribution by a person, within any period of 180 days, of infringing copies of books or specified journals if the total value of qualifying copies distributed or made by the person within that period does not exceed \$6,000. "Qualifying copy" is defined in section 1(1) of the proposed new Schedule 1AA in relation to books and specified journals. The detailed methods for determining the value of qualifying copies made from books and specified journals are set out in sections 5 to 8 of the proposed new Schedule 1AA. It is anticipated that the prices (which are taken to determine the value of qualifying copies) may be denominated in foreign currencies. However, it is noted that there is no provision in the Amendment Bill for determining the exchange rate of a foreign currency that will be used in calculating the total value of qualifying copies. The Legal Service Division is not aware of any provision in other Ordinances which is of general application for determining exchange rate.

10. Under the proposed new section 119B(22) of the Ordinance, SCED may, by notice published in the Gazette, amend Schedules 1AA and 1AB. Such a notice is subsidiary legislation and subject to the scrutiny of the Legislative Council under the negative vetting procedure.

Public Consultation

11. According to paragraph 16 of the LegCo Brief, the proposed numeric limits have been drawn up after extensive discussions with the relevant stakeholders over the past two years. They include (a) the Hong Kong Copyright Licensing Association, representing major newspaper and magazine publishers, and (b) the Hong Kong Reprographic Rights Licensing Society, representing major book and journal publishers. According to the Administration, both groups support the proposal and have urged for early action.

Consultation with LegCo Panel

12. At the meeting of the Panel on Commerce and Industry held on 19 February 2008, the Administration briefed members on, inter alia, its proposed numeric limits within which the copying and distribution offence would not apply. At the meeting held on 16 December 2008, the Administration briefed members on, inter alia, its refined proposals in relation to the copying and distribution offence under section 119B of the Ordinance. The Panel supported in principle the proposed amendments to section 119B of the Ordinance, the revised formulations of the numeric limits, and the proposal for the numeric limits to be prescribed as a schedule to the principal legislation.

Conclusion

13. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. In view of the controversial nature of the matter and the issues raised in paragraphs 8 and 9, members may wish to consider setting up a Bills Committee to consider the Bill in detail.

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