

Bills Committee on the Copyright (Amendment) Bill 2014

Legal liability of uploading copyrighted Cantonese films made in Hong Kong in the mid-20th century

Introduction

At the meeting on 8 December 2014, the Administration was requested to provide information on the application of section 19(4) of the Copyright Ordinance (Cap. 528), in particular, the legal liability of users under Hong Kong's copyright regime when uploading copyrighted Cantonese films made in Hong Kong in the mid-20th century to video sharing websites, such as YouTube. This paper provides the information as requested.

Overview

2. In determining whether a certain act infringes copyright, the actual circumstances of each case should be considered. Under the existing copyright regime, the use of copyright works in the following circumstances does not infringe copyright-

- (a) only the ideas of the underlying work have been incorporated;
- (b) only an insubstantial part of the underlying work has been incorporated;
- (c) only works in the public domain in which copyright has expired have been used;
- (d) the copyright owner has agreed to the use;
- (e) the act concerned is one of the permitted acts under the existing Copyright Ordinance.

Duration of copyright in and the use of films

3. As mentioned in paragraph 2(c), the use of copyright works in the public domain in which copyright has expired does not infringe copyright. Section 19 of the Copyright Ordinance specifies the duration of copyright in films. When determining whether films that were in existence when the Copyright Ordinance came into effect (i.e. 27 June 1997) (for example, Cantonese films made in Hong Kong in the mid-20th century) are works in the

public domain in which copyright has expired, reference is generally made to other provisions, or even previous legislation.

4. The following examples are provided for reference:
 - (a) For a film that was made between 12 December 1972 and 26 June 1997 (i.e. before the commencement of the Copyright Ordinance) and has been published, its copyright subsists until the end of the period of 50 years from the end of calendar year which includes the date of its first publication.¹
 - (b) For a film that was made before 12 December 1972, its copyright is not protected in the form of films according to paragraph 7(1) of Schedule 2 of the Copyright Ordinance but as original dramatic works or photographs in accordance with paragraphs 7(2) to 7(4) of Schedule 2:
 - (i) In respect of original dramatic works², if the work is published during the lifetime of the author, its copyright subsists until the end of the period of 50 years from the end of the calendar year in which the author died; if the work is published after the death of the author, its copyright subsists until the end of the period of 50 years from the end of the calendar year in which it is first published;³
 - (ii) In respect of photographs, its copyright subsists until the end of the period of 50 years from the end of the calendar years in which it is first published.⁴

¹ See paragraph 13(2)(e) of Schedule 2 of the Copyright Ordinance and section 13(3)(b) of the Copyright Act 1956 of the United Kingdom, which applies to Hong Kong.

² Paragraph 7(2) of Schedule 2 of the Copyright Ordinance specifies that the definition of “an original dramatic work” should be within the meaning in the Copyright Act 1911 of the United Kingdom. According to the Copyright Act 1911, “dramatic work” includes works such as any cinematographic production where the arrangement or acting form or the combination of incidents represented give the work an original character.

³ See paragraphs 7(2) and 13(2)(a) of Schedule 2 of the Copyright Ordinance and section 2(3) of the Copyright Act 1956 of the United Kingdom.

⁴ See paragraphs 7(3) and 13(2)(c) of Schedule 2 of the Copyright Ordinance and section 3(4)(b) of the Copyright Act 1956 of the United Kingdom.

Conclusion

5. In view of the above, in ascertaining whether a copyrighted film made in the mid-20th century is a work in the public domain in which copyright has expired, the actual circumstances of each case should be considered.

6. With reference to the examples above, we consider that copyright in certain copyrighted films made in the mid-20th century may have expired. A user does not infringe copyright when uploading works in the public domain in which copyright has expired onto video sharing websites. In addition, the uploading of a work in which copyright still subsists does not constitute copyright infringement if any of the other circumstances as described in paragraph 2 above applies.

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