

立法會

Legislative Council

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Bills Committee on Film Censorship (Amendment) Bill 2021

Background brief

Purpose

This paper provides background information on the Film Censorship (Amendment) Bill 2021 ("the Bill") and summarizes the major views expressed by members at the relevant meeting of the Panel on Information Technology and Broadcasting ("the Panel").

Background

Film censorship regulatory framework

2. The Film Censorship Ordinance (Cap. 392) provides that any film intended for exhibition in Hong Kong shall be submitted to the Film Censorship Authority ("the Authority"), who shall assign a censor to view the film and decide whether the film can be approved for exhibition and, if so, its appropriate classification. In carrying out his or her film censorship duties, a censor shall consider (i) whether the film portrays matters such as violence, crime, sexuality, and offensive language and behaviour; and (ii) whether it denigrates or insults any class of the public by reference to matters such as race, religion and gender. In considering the matters above, the censor shall take into account the effect of the film as a whole and its likely effect on persons likely to view it; the artistic, educational, literary, scientific, social or cultural value of the film; and the circumstances of its intended exhibition.

3. Cap. 392 provides that the Secretary for Commerce and Economic Development may from time to time cause to be prepared the Film Guidelines for Censors ("the Guidelines"), indicating the manner in which it is proposed that censors exercise their functions under the ordinance. Censors make decisions on approval for exhibition and classification of films in accordance with the requirements of Cap. 392 and the general principles as set out in the Guidelines.

Amendments to the Film Guidelines for Censors and need for amending the Film Censorship Ordinance

4. On 30 June 2020, the Standing Committee of the National People's Congress enacted the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region ("NSL"). Article 3 of NSL provides that it is the constitutional duty of the Hong Kong Special Administrative Region ("HKSAR") to safeguard national security, and the executive authorities, legislature and judiciary of HKSAR shall effectively prevent, suppress and impose punishment for any act or activity endangering national security in accordance with NSL and other relevant laws. According to the Administration, by implication of NSL, censors should perform the duty to prevent and suppress any act or activity endangering national security in discharging his or her duties under Cap. 392.

5. Accordingly, the Administration amended the Guidelines which were gazetted on 11 June 2021 and took effect on the same day. The revised Guidelines provide censors with clearer guidance when performing film censorship duties in determining whether and to what extent a film may be related to national security. Having reviewed Cap. 392, the Administration also recommends that the ordinance should be amended to enhance the film censorship regulatory framework to ensure more effective implementation of the duty to safeguard national security as required by NSL, to prevent and suppress acts or activities which may endanger national security, to close any identified loopholes, and to meet the needs of recent circumstances.

Film Censorship (Amendment) Bill 2021

6. The Bill to amend Cap. 392 to achieve the above objectives was gazetted on 27 August 2021, and received its First Reading at the Legislative Council meeting of 1 September 2021. The Bill, if passed, would come into operation on the day on which the enacted Cap. 392 is published in the Gazette. The main provisions in the Bill provide for the following:

- (a) national security as one of the matters to be considered by a censor;
- (b) powers to be exercised on national security ground; and
- (c) penalty, enforcement and other operational measures.

7. Details of the main provisions of the Bill are set out in paragraph 15 of the Legislative Council Brief (File Ref: CCIB/A 230-5/1(C) dated 24 August 2021).

Major views and concerns expressed by members

8. At the meeting on 12 July 2021, the Administration briefed the Panel on the film censorship regulatory framework and reported on the amendments to the Guidelines. The major views expressed by members are summarized in the ensuing paragraphs.

Responsibilities and liabilities of censors and relevant parties

9. The majority of members expressed support for the revised Guidelines. Some members enquired whether a censor would need to seek advice from the Department of Justice ("DOJ") if he or she was uncertain whether national security-related issues arose from certain parts of a film and the extent of responsibilities that various parties such as operators of cinemas that screened the film, and the production team etc., had to bear if a film approved for exhibition was subsequently found to contain elements that might be considered to have contravened NSL.

10. The Administration advised that criminal acts committed by any persons or organizations would be investigated by law enforcement agencies. The same principle applied to parties related to films approved for exhibition under the revised Guidelines. Under the existing film censorship regulatory framework, all films intended for exhibition must first be submitted to the Authority. Following the implementation of NSL, the Guidelines had been revised to provide censors with clearer guidance when performing film censorship duties. In particular, censors should be vigilant in identifying any content of a film which was objectively and reasonably capable of being perceived as endorsing, supporting, promoting, glorifying, encouraging or inciting act or activity that might endanger national security. Should the censors need to seek clarification on matters during the course of their duty, they could consult the appropriate persons or authorities, including DOJ.

Application of the Guidelines for Censors to films already classified or pending classification

11. Regarding members' enquiries on whether the revised Guidelines were applicable to films pending classification, and whether they had retrospective effects, the Administration advised that as soon as the revised Guidelines came into effect upon gazettal on 11 June 2021, they were applicable to applications for classification and exhibition of films being processed or submitted thereafter. Under the revised Guidelines, film producers could continue to consult the Authority and obtain non-binding advice regarding the application for classification and exhibition of films that might be considered to be portraying

violence, sexuality or horror. They could also request such advice for films currently awaiting classification or in the course of production.

Provision of training on national security to censors

12. Members asked how the Administration would ensure that censors and members of the Panel of Advisers had sufficient knowledge of national security when applying the revised Guidelines. They also asked whether NSL-related training would be provided for censors to assist them in applying the revised Guidelines. Some members suggested that the Administration should strengthen communications on the national security aspects in film production with the film industry to strike a balance between safeguarding national security and creative freedom.

13. The Administration advised that to fulfill the Government's constitutional obligation to safeguard national security, the Guidelines had been revised to provide censors with clearer guidance when performing film censorship duties to determine whether and to what extent a film might be related to national security, so as to decide whether the film was suitable for exhibition and determine its classification. To enhance transparency and maintain creative freedom in the film industry, the Administration had explained the legal principles and implementation details of the revised Guidelines to the film industry and would continue to work with the industry to address their concerns. Suitable training would be provided to censors regarding NSL and other relevant matters on national security. In determining whether certain parts in a film were appropriate for exhibition, censors would consider a number of factors including its likely effect on the audience, and they could seek the advice of DOJ on related matters. Where necessary, the Administration would seek legal advice on relevant issues arising from film censorship for reference to censors.

Latest development

14. At the House Committee meeting on 3 September 2021, Members agreed to form a Bills Committee to study the Bill.

Relevant papers

15. A list of relevant papers is set out in the **Appendix**.

Appendix

List of relevant papers

| Date | Event | Paper |
|------------------|----------------------------|---|
| 12 July 2021 | Meeting of the Panel | Administration's paper (LC Paper No. CB(1)1089/20-21(05)) |
| 3 September 2021 | Meeting of House Committee | The Bill Legislative Council Brief (File Ref: CCIB/A 230-5/1(C)) Legal Service Division Report (LC Paper No. LS115/20-21) |