

LCQ4: Use of copyright work

Following is a question by the Hon Chan Chi-chuen and a written reply by the Secretary for Commerce and Economic Development, Mr Edward Yau, in the Legislative Council today (February 26):

Question:

It has been reported that on December 27 last year, the Police used on its social networking platform a photograph, the copyright of which was owned by an online media organisation, without obtaining prior consent from the organisation. In response to queries on their copyright infringement, the Police argued that under section 54A of the Copyright Ordinance (Cap. 528), "[f]air dealing with a work by the Government...for the purposes of efficient administration of urgent business does not infringe the copyright in the work". Some members of the public and media organisations are worried that the Police may abuse the said provision, making the protection for copyright owners under the Copyright Ordinance exist only in name. In this connection, will the Government inform this Council:

(1) whether it will immediately put forward a clear definition for the term "urgent business" in section 54A of Cap. 528, so as to allay the concern of members of the public and media organisations; and

(2) whether it will consider, prior to invoking the provision and using the photographs and video clips the copyright of which is owned by media organisations, informing the media organisations concerned and seeking their consent; if so, of the details; if not, the reasons for that?

Reply:

President,

The Copyright Ordinance confers to copyright owners a set of exclusive rights to do certain restricted acts in relation to their copyright works, including copying the works and issuing copies of the works to the public. At the same time, the Copyright Ordinance also sets out a number of exemption provisions to prescribe certain permitted acts which may be done (for example, for the purposes of research, private study, education, criticism, review, reporting current events, administration of urgent business by the Government, proceedings of the Legislative Council and judicial proceedings), so as to allow for reasonable uses of other people's copyright works without infringing copyright. Whether a specific act constitutes copyright infringement under particular circumstances is subject to the actual circumstances of the case.

Regarding the two parts of the question, our reply is as follows:

(1) Section 54A of the Copyright Ordinance is one of the copyright exemption

provisions. Pursuant to this section, fair dealing with a copyright work by the Government is permitted for the purposes of efficient administration of urgent business. As explained by the Government when the provision was enacted, the provision does not provide for any legal definition for the term "urgent business", with the intention that the term should be given its plain and literal meaning, namely, business that needs to be dealt with immediately.

(2) The purpose of providing copyright exceptions is to balance the legitimate interests of copyright owners with the need for reasonable uses of copyright works by users. If users need to invoke certain copyright exemptions, it would be desirable for the users to inform the copyright owners as far as practicable. Nevertheless, it remains that, with the exemption provisions therein, the Copyright Ordinance allows users to reasonably use copyright works under prescribed conditions without having obtained the consent of the copyright owners.