

立法會
Legislative Council

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by the Administration)

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**Bills Committee on
Copyright (Suspension of Amendments) Bill 2001**

**Minutes of meeting
held on Friday, 18 May 2001, at 8:30 am
in the Chamber of the Legislative Council Building**

- Members present** : Hon SIN Chung-kai (Chairman)
Hon Kenneth TING Woo-shou, JP
Dr Hon LUI Ming-wah, JP
Hon Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-ye, JP
Hon HUI Cheung-ching
Hon CHAN Kam-lam
Hon Howard YOUNG, JP
Dr Hon YEUNG Sum
Hon SZETO Wah
Hon LAW Chi-kwong, JP
Hon Audrey EU Yuet-mee, SC, JP
- Members absent** : Hon Cyd HO Sau-lan
Hon Eric LI Ka-cheung, JP
Prof Hon NG Ching-fai
Hon YEUNG Yiu-chung
Hon Timothy FOK Tsun-ting, SBS, JP
- Public officers attending** : Mr Kenneth MAK
Deputy Secretary for Commerce and Industry
- Mr Philip CHAN
Principal Assistant Secretary for Commerce and Industry

Mr Peter CHEUNG
Deputy Director of Intellectual Property

Ms Pancy FUNG
Assistant Director of Intellectual Property

Mr Jeffrey GUNTER
Senior Assistant Law Draftsman

Mr Michael LAM
Senior Government Counsel

Mr Vincent POON
Assistant Commissioner of Customs and Excise

**Attendance by
invitation**

: Business Software Alliance

Mr Howard DIGBY
Chairman

Hong Kong Publishers & Distributors Association

Mr YUEN Ming-hung
Chairman

The Newspaper Society of Hong Kong

Mr LAU Chi-kuen
Spokesman

Mr Kelvin LAU
Representative

Hong Kong Reprographic Rights Licensing Society

Mr Viking YAM
General Manager

International Federation of the Phonographic Industry
(Hong Kong Group) Limited

Mr FUNG Tim-chee, Ricky
Chief Executive Officer

Hong Kong, Kowloon & New Territories Motion
Picture Industry Association Limited

Mr Woody TSUNG
Chief Executive

Hong Kong Publishing Federation Limited

Mr SIN Kwok-chung
Director

Hong Kong News Clipping Industry Working
Committee

Mr SO Wai-ming, Raymond
Chairman

Ms Sae LAM, Apple
Representative

Caput Schools Council

Mr YU Cheong-ning, Lawrence
The Principal, Hong Kong Sam Yuk Secondary School

Grant Schools Council

Ms Diana WONG Ip Wai-Ying
Principal, St. Paul's Secondary School
Hon Secretary, Grant Schools Council

Hong Kong Private Schools Association Limited

Mr CHAN Wai-kai
Vice-President, Hong Kong Private Schools Association
Principal, Wai Kiu College

Hong Kong Subsidized Secondary Schools Council

Mr HUI Chin-yim, Stephen
Chairman

Television Broadcasts Limited

Mr Stephen CHAN
Controller, Programme Division & External Affairs
Division

Ms Tina LEE
Senior Legal Counsel of Legal Department

Hong Kong Cable Television Limited

Mr Desmond CHAN
Company Lawyer

Ms CHAN So-kuen
Senior External Affairs Manager

Hong Kong Society of Accountants

Mr Peter TISMAN
Deputy Director (Professional Development)

Hong Kong Christian Council

Mr SO Shing-yit (Rev)
General Secretary

Mr LEE C J Joseph (Rev)
Chairman of ACP

Hong Kong Public Relations Professionals' Association
Limited

Mr Roger LAM
Vice President

Ms Angel CHUNG
Honorary Secretary

Hong Kong Development and Strategic Research
Centre

Mr Mathias WOO
Chairman

Hong Kong Special Schools Council

Mrs Laura LING LAU Yuet-fun
Chairman

Clerk in attendance : Mrs Florence LAM
Chief Assistant Secretary (1)4

Staff in attendance : Miss Anita HO
Assistant Legal Adviser 2

Mr S.C. TSANG
Senior Assistant Secretary (1)7

I Meeting with deputations

The Chairman invited representatives of the deputations to give their views.

Business Software Alliance (BSA) (LC Paper No CB(1) 1277/00-01(01))

2. Mr Howard DIGBY, Chairman of BSA, said that BSA strongly supported the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 (Amending Ordinance) and was opposed to any attempts to broaden the scope of the Copyright (Suspension of Amendments) Bill 2001 (the Bill) to include software within the scope of suspension. On the proposal of relaxing the legal requirements in respect of parallel-imported computer software, he pointed out that the proposed relaxation might not bring about the anticipated price cut in business software, as universal pricing for individual products was applied to distributors around the world. Differences in the price of a particular product were mostly due to the differences in the cost of doing business and profit margins for distributors and retailers in different markets. He suggested that the Administration and the Legislative Council should seek the views of software distributors and retailers in Hong Kong, as they were parties most affected by the proposed relaxation.

Hong Kong Reprographic Rights Licensing Society (HKRRLS) (LC Paper No CB(1) 1250/00-01(01))

3. Mr Viking YAM, General Manager of HKRRLS, said that HKRRLS fully supported the implementation of the Amending Ordinance, as it was in line with the international standards in the protection of intellectual property rights. HKRRLS was opposed to the suspension proposed in the Bill, as it would be possible for copyright owners and users to find mutually acceptable solutions to ensure compliance with the law. He pointed out that HKRRLS and other copyright owners' associations were ready to grant authorizations for the use of their copyright works and that relevant mechanisms were available. He urged the Administration to adhere to the provisions in the Amending Ordinance.

International Federation of the Phonographic Industry (Hong Kong Group) Limited (IFPI)

4. Mr Ricky FUNG, Chief Executive Officer of IFPI, opined that the Amending Ordinance strengthened the protection of intellectual property rights in Hong Kong and thus created a more favourable environment for the development of the phonographic industry. IFPI was of the view that the law should provide the same level of protection to different types of copyright works, including music, movie, television or radio broadcasts.

Hong Kong Publishing Federation Limited (HKPF)
(LC Paper No CB(1) 1250/00-01(02))

5. Mr SIN Kwok-chung, Director of HKPF, said that comprehensive and effective legislation on the protection of intellectual property rights was crucial to the development of the publishing industry and the economy of Hong Kong. He opined that all copyright works should be given the same level of protection under the law and thus the proposal of suspending the criminal provisions in respect of the unauthorized use of some copyright works would be unreasonable and unfair. HKPF strongly objected to the proposed suspension. He also informed members that the publishing industry had been making every effort to facilitate the legitimate use of copyright works in different sectors. The problem of implementation of the Amending Ordinance could be resolved through the market mechanism, and the proposed suspension was unnecessary.

Hong Kong News Clipping Industry Working Committee (HKNCI)
(LC Paper No CB(1) 1250/00-01(03))

6. Mr Raymond SO, Chairman of HKNCI, said that HKNCI supported the Amending Ordinance and was prepared to work out the authorization and charging mechanism with the press and publication industry. He urged the Administration to coordinate discussions between the copyright owners and users for the establishment of a transparent and comprehensive authorization mechanism.

Hong Kong, Kowloon & New Territories Motion Picture Industry Association Limited (MPIA)

7. Mr Woody TSUNG, Chief Executive of MPIA, supported the Amending Ordinance and considered that it was an important milestone in the protection of intellectual property rights in Hong Kong. MPIA was also in support of the Bill. MPIA shared the Administration's view that copyright works which were unrelated to the free-flow of information but were susceptible to the problem of piracy should be excepted from the scope of the Bill.

The Newspaper Society of Hong Kong (NSHK)

8. Mr LAU Chi-kuen, Spokesman of NSHK, informed members that to tie in with the implementation of the Amending Ordinance, NSHK had been working on the establishment of a collective authorization mechanism for the press. He advised the meeting that the mechanism would be ready in a few months' time and copyright users could approach a single representative body for the authorization required for the legitimate use of copyright works in the press.

Caput Schools Council (CSC)

9. Mr Lawrence YU, the representative of CSC, requested that exemption from the criminal provisions in the Amending Ordinance be granted to the educational sector. He also suggested that copyright owners should offer favourable terms to schools for authorized use of copyright works and that the Education Department should be responsible for paying the related charges on behalf of the schools.

Grant School Council (GSC)

10. Mrs Diana WONG, Hon Secretary of GSC, pointed out that teachers had been encouraged to use authentic materials from different sources including the media to facilitate discussions and participation among students and to achieve better results in teaching. However, with the implementation of the Amending Ordinance, teachers were worried about the possibility of committing a criminal offence inadvertently when they made copies of materials from newspapers, magazines or recordings from radio or television broadcast. She urged the Education Department to act on behalf of all schools and to work out an agreement with the relevant copyright bodies, so that allowance would be given to the use of copyright works in the educational sector for teaching purposes.

Hong Kong Private Schools Association Limited (HKPSA)

11. Mr CHAN Wai-kai, Vice-President of HKPSA, supported the Amending Ordinance as an additional tool against piracy. However, he hoped that the Bills Committee would urge the Administration to address the concerns of the educational sector over the definition of "reasonable extent" as specified in the statutory exemptions for educational copying.

Hong Kong Subsidized Secondary Schools Council (HKSSSC)

12. Mr Stephen HUI, Chairman of HKSSSC, pointed out that HKSSSC was supportive of the protection of intellectual property and had taken the initiative to sign an agreement with HKRRLS to enable its member schools to make legitimate copies of copyright works for teaching purposes. He said that the legitimate copying of newspapers, magazines and downloading of information from the Internet was important for schools in using up-to-date information for teaching purposes and thus should be permitted.

Television Broadcasts Limited (TVB)
(LC Paper No CB(1) 1250/00-01(04))

13. Mr Stephen CHAN, Controller of Programme Division & External Affairs Division, TVB, said that TVB strongly objected to the Administration's proposal of excluding only television drama but not all television programmes from the scope of suspension in the Bill. He pointed out that as explained in TVB's submission, all television programmes had substantial commercial value and should be given the same degree of protection under the Copyright Ordinance. Moreover, TVB had a well established and convenient authorization mechanism for users to make legitimate recordings of its television programmes. The worries of the public about the absence of proper channels to obtain authorization for recording the required programmes for information dissemination or educational purposes did not exist in this case.

Hong Kong Cable Television Limited (Cable TV)
(LC Paper No CB(1) 1250/00-01(05))

14. Mr Desmond CHAN, Company Lawyer of Cable TV, said that the same level of protection should be provided to all copyright works. In view of the rampant piracy of cable programmes, it was inappropriate to suspend the application of the Amending Ordinance in relation to these programmes. In addition, he pointed out that the Hong Kong legislation was apparently lagging behind the international standard. For example, it was an offence in the United Kingdom (UK) to dishonestly receive pay television programmes with the intention to avoid payment. He urged the Administration to address the problem immediately by adding in the Copyright Ordinance a provision similar to that of the U.K. legislation in relation to pirated viewing of pay television programmes.

Hong Kong Society of Accountants (HKSA)

15. Mr Peter TISMAN, Deputy Director of HKSA, said that HKSA supported the Bill and was agreeable to the exclusion of some copyright works from the scope of suspension. He urged the Administration to conduct full consultation with different sectors of the community including the professional bodies during the suspension period, so that appropriate long term measures could be worked out.

Hong Kong Christian Council (HKCC)

16. Rev. SO Shing-yit, General Secretary of HKCC, urged the Administration to take into consideration the special circumstances in the use of copyright works within the religious community, and to grant exemption to religious bodies from the criminal provisions in relation to the use of copyright works.

Hong Kong Public Relations Professionals' Association Limited (PRPA)

17. Ms Angel CHUNG, Honorary Secretary of PRPA, said that PRPA respected intellectual property rights but at the same time considered that ad hoc copying of newspapers articles for internal reference should not be made an offence. She supported the suspension of the Amending Ordinance pending the full review on measures to balance the needs of copyright protection and information dissemination in the community.

Hong Kong Development and Strategic Research Centre (DSRC)

18. Mr Mathias WOO, Chairman of DSRC, considered that the exclusion of four categories of copyright works from the scope of suspension was inappropriate. He opined that all copyright works should be included in the scope of the suspension. The issue should be considered in detail. The impact on different sectors of the community should be carefully assessed in consultation with all parties concerned.

Hong Kong Special Schools Council (SSC)

19. Mrs Laura LING, Chairman of SSC, pointed out that it was common for teachers in special schools to prepare tailor-made teaching materials using articles and pictures from newspapers, magazines or the Internet. She requested the Administration and the Bills Committee to take into consideration the needs of the educational sector in the use of copyright works. She suggested that clear guidelines on the legitimate use of copyright works for teaching purposes should be prepared for teachers' reference, so that effective teaching and protection of intellectual property rights could be ensured at the same time.

Discussion with members

Press and publication

20. Miss Margaret NG opined that the Bills Committee had to strike a balance between the protection of intellectual property rights and the interest of different sectors of the community. She sought the views of representatives of NSHK on the possibility of allowing free copying of newspaper articles for non-commercial purposes under its authorization mechanism. She opined that to facilitate the free-flow of information, the public should be able to use the information in the newspapers without worrying about the possibility of committing criminal offences. In addition, she sought information from NSHK regarding the existing authorization arrangements among newspapers in copying works from each other during their course of business.

21. Mr Kelvin LAU, representative of NSHK, said that NSHK was trying to establish a one-stop authorization mechanism for the press to facilitate different sectors of the community in the legitimate copying of articles and materials in the newspapers. He advised members that consideration was being made for exemption

of charitable, educational and non-profit making organizations from the authorization requirements. Special arrangements would be made in consultation with the tertiary education sector and the news clipping industry on the fees to be charged having regard to the specific characteristics of their usage of the copyright works. NSHK was also working on an authorization system among local newspapers for the legitimate sharing of their works. As for materials from overseas press, exemption was given to the use of such materials, to a reasonable extent, in news reporting under the Copyright Ordinance.

22. Mrs Selina CHOW said that the needs and concerns of the community should be taken into account in the prevention of copyright piracy. She asked the representatives of NSHK to confirm when their collective authorization mechanism would be available to help the public make legitimate copies of newspaper materials. Moreover, she suggested that a channel of arbitration should be provided for users to resort to in case of unfair treatment under the mechanism.

23. Mr LAU Chi-kuen said that NSHK had been working hard on the establishment of the collective authorization mechanism and it was expected to be ready in a few months' time. He said that NSHK would provide a transparent one-stop authorization mechanism for users at reasonable charges. Moreover, he undertook to explore the feasibility of providing a channel of arbitration to handle appeals.

24. Mr SZETO Wah cautioned that in granting authorization to users, the press and publication sector should pay attention to the copyright ownership of different types of articles, for example those provided by freelance writers, interview reports, etc. Mr Kelvin LAU of NSHK agreed that special circumstances did exist in the copyright ownership of different types of articles. The newspapers or magazines concerned had to be very careful in seeking the agreement of the copyright owner before granting authorization to users.

Computer Software

25. Miss Margaret NG asked BSA about their views towards the provision of "grandfathering" arrangements to exempt the criminal liability of user enterprises which used pirated out-dated software installed before the enactment of the Amending Ordinance. She opined that this would be a fairer arrangement than the "downgrade" arrangement provided by BSA members as these users could not use legitimate new software because of the limitations of the existing hardware.

26. Mr Howard DIGBY of BSA pointed out that the strengthening of legal tools against copyright piracy through the Amending Ordinance was in the interest of the community as a whole, as proper protection of intellectual property rights was crucial to the development of a knowledge-based economy in Hong Kong. He said that business software should enjoy the same level of protection as other copyright works and enterprises using software in business should pay for the legitimate use of the products as part of their operating expenses. The "downgrade" arrangement was

considered fair taking into account the fact that majority of enterprises were paying for the legitimate use of the current version of software. This arrangement allowed flexibility for users to use the out-dated version of software while providing them with the current version at the same time. Regarding the "grandfathering" arrangement proposed by Miss Ng, he said that BSA was not in a position to comment on this special legal arrangement.

Television Programmes

27. In response to Ms Audrey EU's enquiry on the operation of TVB's authorization mechanism, Mr Stephen CHAN said that applications had been received in the past years from a wide range of local and overseas organizations for the legitimate recording of different types of television programmes. In general, the charges would be calculated having regard to the nature of usage of the recorded programmes. Authorizations were normally granted to non-profit making, charitable or educational organizations at a minimal charge of about ten dollars and were renewed regularly on a half-yearly basis. On the point of establishing a collective authorization mechanism for all television programmes, he said that there were technical difficulties involved in the operation and pricing of such a mechanism in view of the great variation in the commercial value of different television productions.

28. Mr Desmond CHAN of Cable TV shared Mr Stephen CHAN's view on the difficulties in operating a collective authorization mechanism. He added that as there was only a few television stations in Hong Kong, it would be convenient for the public to approach individual stations for the authorization required and there was no urgent need for the establishment of a collective authorization mechanism. He advised the meeting that recording of Cable TV programmes for educational purposes would be free except for cases of recording and use in large volume. He cited the use of such materials in mass communication courses in the tertiary education sector as an example. Special arrangements would be made in consultation with the users and normally favourable terms would be offered to these users.

Other concerns

29. Ms Audrey EU sought information on the representativeness of the organizations present at the meeting and the percentage of market share their members were holding in their relevant sectors. The information provided was summarized in the following table:

Name of Organization	Representativeness
Business Software Alliance (BSA)	Majority of copyright owners in terms of market share. A different mix of local and international members in 65 countries and territories.
The Newspaper Society of Hong Kong (NSHK)	Existing membership included 12 local newspapers. New members from local and overseas would be welcome. Believed that

	membership would grow with the development of an effective collective authorization mechanism.
Hong Kong News Clipping Industry Working Committee (HKNCI)	Represented 90% of news clipping companies in Hong Kong.
Hong Kong Publishing Federation Limited (HKPF)	Represented over 90% of local publishers and retailers.
Hong Kong Reprographic Rights Licensing Society (HKRRLS)	Over 80% of local textbook publishers and writers were members of HKRRLS. Represented the rights of a large number of publications in foreign languages through bilateral agreements with copyright bodies in 20 countries and cooperation with the International Federation of Reproduction Rights Organizations.

30. Mr YEUNG Sum pointed out that for non-profit making organizations including charitable, religious and social services ones, exemption from criminal sanctions should be granted under the Copyright Ordinance. He asked the Administration to comment on the exemption arrangements.

31. The Deputy Secretary of Commerce and Industry explained that exemptions were provided for educational copying done within a "reasonable extent" under the Copyright Ordinance. However, guidelines on the use of copyright works within "reasonable extent" would have to be agreed between copyright owners and users to eliminate uncertainties. From the views put forward by the deputations at the meeting, it was clear that copyright owners and users had their own interest and concerns in the legitimate use of copyright works. The Administration would aim at finding a solution which would strike a balance between the protection of intellectual property right and free-flow of information for the benefit of the community as a whole.

32. The Chairman thanked the deputations for attending the meeting and invited interested bodies to give written submissions to the Bills Committee for consideration.

Date of next meeting

33. The third meeting of the Bills Committee would be held on Tuesday, 22 May 2001 at 6:30 pm in the Chamber of the Legislative Council Building.

34. The meeting ended at 10:40 am.