

立法會
Legislative Council

LC Paper No. CB(1)1080/03-04
(These minutes have been seen
by the Administration)

Ref: CB1/BC/4/01/2

**Bills Committee on Copyright (Amendment) Bill 2001
and Copyright (Amendment) Bill 2003**

**Minutes of meeting
held on Wednesday, 28 January 2004 at 2:30 pm
in Conference Room A of the Legislative Council Building**

- Members present** : Hon SIN Chung-kai (Chairman)
Hon Margaret NG
Hon HUI Cheung-ching, JP
Dr Hon YEUNG Sum
Hon YEUNG Yiu-chung, BBS
Hon Timothy FOK Tsun-ting, SBS, JP
Dr Hon LAW Chi-kwong, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon MA Fung-kwok, JP
- Members absent** : Hon Kenneth TING Woo-shou, JP
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon CHAN Kam-lam, JP
- Public officers attending** : Miss Mary CHOW
Deputy Secretary for Commerce, Industry and
Technology (Commerce and Industry)
- Mr Donald CHEN
Principal Assistant Secretary for Commerce, Industry
and Technology (Commerce and Industry)
- Mr Jeffrey CHAN
Assistant Secretary for Commerce, Industry and
Technology (Commerce and Industry)

Miss Pancy FUNG
Assistant Director of Intellectual Property

Mr Frederick WONG
Solicitor, Intellectual Property Department

Mr Sunny CHAN
Senior Government Counsel, Department of Justice

Mr Y K TAM
Senior Superintendent, Intellectual Property
Investigation Bureau, Customs and Excise Department

Clerk in attendance : Miss Polly YEUNG
Chief Council Secretary (1)3

Staff in attendance : Miss Anita HO
Assistant Legal Adviser 2

Mr S C TSANG
Senior Council Secretary (1)7

Action

I Confirmation of minutes

LC Paper No. CB(1)629/03-04 - Minutes of meeting on 27 November 2003

The minutes of meeting held on 27 November 2003 were confirmed.

II Meeting with the Administration on the Copyright (Amendment) Bill 2003

LC Paper No. CB(1)191/03-04(01) - Updated Administration's response to views/concerns of deputations, members and the Assistant Legal Adviser (as at 26.1.2004)

LC Paper No. CB(1)155/03-04(01) - Revised marked-up copy of the Copyright (Amendment) Bill 2003 incorporating the changes effected by the Copyright (Amendment) Ordinance 2003 (formerly the Copyright (Amendment) Bill 2001) provided by the Administration

LC Paper No CB(1)862/03-04(01) - Administration's letter dated 7 January 2004 addressed to the Law Society of Hong Kong (English version only)

LC Paper No CB(1)862/03-04(02) - Submission dated 26 January 2004 from the Law Society of Hong Kong in response to LC Paper No CB(1)862/03-04(01) (English version only)

2. The Bills Committee deliberated on the issues listed in the paper "Updated Administration's response to views/concerns of deputations, members and the Assistant Legal Adviser" (LC Paper No. CB(1)191/03-04(01) as at 26.1.2004) (Index of proceedings attached at the **Appendix**).

3. The Chairman informed members that Ms Cyd HO had notified him in writing that she would withdraw from the Bills Committee due to her engagement in the Select Committee to inquire into the handling of the Severe Acute Respiratory Syndrome outbreak by the Government and the Hospital Authority. Members noted Ms HO's withdrawal.

Criminal liability for business end-users under proposed section 118A (Issue 1)

4. Having consulted the publishing industry and the copyright users including those from the education and commercial sectors, the Administration reported that copyright owners and users held divided views on the scope of end-user criminal liability for the use of pirated copies of copyright works in business proposed under the Bill which was confined to four categories of works, namely, computer programs, movies, television dramas and musical recordings (the four categories of works). According to the Administration's observation, a consensus among copyright owners and users was unlikely to be reached in the near future. The Administration therefore considered it not appropriate at the present stage to consider expanding the scope of criminal liability for the use of pirated copies of copyright works in business to cover other categories of copyright works, such as printed works.

5. In view of the above circumstances, the Administration suggested two possible approaches to deal with the Bill for members' consideration:

(a) Option A

The Bills Committee would continue the scrutiny of the Bill in its present form, subject to any Committee Stage amendments (CSAs)

proposed by the Administration in consultation with members. If the Bill was subsequently enacted, the Administration would follow up with the copyright owners and users to review the scope of end-user criminal liability to see if an agreement could be reached to expand it to cover printed works and to discuss with them the issue of adopting in the Copyright Ordinance (Cap.528) (CO) the “fair use” model in the relevant copyright legislation in the United States (US).

(b) Option B

Instead of examining the Bill in its entirety, the Bills Committee would be invited to scrutinize those proposed provisions of the Bill which were not related to criminal liability for business end-users (i.e. the copyshop offence related clauses). Clauses related to criminal liability for business end-users would be removed through CSAs and subject to the support of Legislative Council (LegCo) Members, a Bill containing only copyshop offence related clauses could be enacted. As for the issue of end-user liability, the Administration would discuss with the copyright work owners and users with a view to working out the proper scope of end-user liability and an appropriate way to adopt the US “fair use” approach in CO. Any proposals so worked out would be introduced as a new Bill to LegCo. Pending this, the effective period of the Copyright (Suspension of Amendments) Ordinance 2001 (Cap. 568) would need to be extended to allow time for discussion and the enactment of a new Bill.

6. The Chairman expressed his support for Option B, under which the Administration would be able to continue the consultation with copyright owners and users with a view to reaching some form of consensus on the way forward. Mr MA Fung-kwok shared the Chairman's view. Although the other members did not indicate their position, they had not raised any objection to Option B.

Admin

7. The Chairman also requested the Administration to provide the Bills Committee with its revised proposal on the Bill as soon as possible if Option B was to be pursued. He also suggested that the Administration might wish to seek the views of other members on the two options after the meeting.

Admin

8. Referring to the Administration's response on the latest position of the discussion between copyright owners and users on the scope of criminal liability for business end-users under Issue 1.1, Mr HUI Cheung-ching enquired about the differences in the “fair use” provisions under the relevant law in US and Hong Kong. At the Chairman's request, the Administration undertook to provide a paper highlighting the major differences on the “fair use” provisions under the Hong Kong and US copyright laws after the meeting for members' reference.

Offence for possession of infringing copies by a copying service business under proposed section 118C (Issue 3)

9. The Administration informed the Bills Committee that since the last meeting, the publishing industry and the copying service business had been consulted and those consulted had not raised objection to the Administration's revised version of proposed section 118C (Annex to Table 3 of LC Paper No. CB(1)191/03-04(01)).

10. At the invitation of the Chairman, the Assistant Legal Adviser 2 (ALA2) sought clarification on the offence contemplated under proposed section 118C(2), i.e. a person commits an offence if, for the purpose of or in the course of a copying service business, he possesses a reprographic copy of a copyright work as published in a book, magazine or periodical, being a copy that is an infringing copy of the copyright work. To facilitate discussion, ALA2 cited an example of a student requesting a copy-shop to copy a work which contained copy of a photo published in a magazine. Since the copy of the photo was regarded as a reprographic copy of a copyright work, it appeared that the copy-shop providing copying service to the student might commit an offence under proposed section 118C(2) of the Bill when found to be in possession of such a copy.

11. In response, the Administration explained that this would depend on whether the reprographic copy in question was an "infringing copy" as defined under existing section 35 of CO. As regards the case of the student requesting a copy-shop to make a copy of a copyright work, the Administration took the view that the copy in question would not be considered as an "infringing copy" if the act of reproducing the copy by the student fell within the scope of permitted acts, such as for research and private study, as defined under section 38 of CO. The Administration further advised that as the "reprographic copy" in question did not amount to an "infringing copy", it followed that the copy-shop concerned would not be liable for the criminal offence under proposed section 118C(2). Nevertheless, the Administration pointed out that due consideration had to be given to both the quantitative and qualitative aspects, such as the portion of a publication reproduced and whether the essential content of a publication such as an executive summary of a report was reproduced, in determining whether an infringement of copyright work might have been committed. The Administration reported that copyshops which had been consulted were aware of the criminal liability involved for provision of copying service.

12. To enable them to conduct legitimate business when the copyshop offence came into force, some copyshop business operators had requested the Intellectual Property Department (IPD) to make arrangements for them to meet with the publishing industry to explore ways to work out licensing arrangements amongst themselves. IPD would follow up accordingly.

13. The Administration also informed the Bills Committee that so far, both the Hong Kong Bar Association and The Law Society of Hong Kong had not raised any view on the Administration's revised proposal on section 118C.

Reward of nominal value under proposed section 118 and 118C (Issues 3.3 and 5.2)

14. Members noted and raised no objection to the Administration's proposal to exclude reward of a nominal value under section 118 and 118C.

Proposed removal of end-user criminal and civil liability for business end use in relation to parallel imports under clauses 2, 3 and 4 of the Bill (Issue 8.1)

Admin

15. Both the International Federation of the Phonographic Industry (IFPI) (LC Paper Nos. CB(1)897/03-04(01) to (03) and 923/03-04(01)) and Hong Kong Video Development Foundation (LC Paper No. CB(1)467/03-04(01)) expressed reservation on the proposed liberalization as it would affect the business of the film and music industries due to the relaxation on the right for public performance of a film or sound recording by a business. The Administration advised that the proposed liberalization would not affect the rights of copyright owners under section 27 of the CO to bring civil action against copyright infringement for playing or showing of a film or sound recording in public without proper authorization. The Administration took the view that the proposal would strike a proper balance between the interests of copyright owners and users. The Administration would follow up the other issues and include its comments by updating the consolidated response.

(Post-meeting note: IFPI's 3 submissions forwarded to the Chairman via email on 27 January 2004 and its letter dated 30 January 2004 were circulated for members' reference vide LC Paper Nos. CB(1)897/03-04(01) to (03) and 923/03-04(01) on 29 January and 3 February 2004 respectively.)

Admin

16. Mr MA Fung-kwok expressed concern on the adequacy of protection against copyright infringement of digital works placed on the Internet. The Administration indicated that when CO was enacted in 1997, copyright issues on the Internet had been taken into account, for example, section 26(2) of CO already included the making available of copies of works through the Internet. Nevertheless, the Administration took note of Mr. MA's concern for consideration.

III Any other business

17. Members agreed to hold the next two meetings on Wednesday, 11 February at 8:30 am and Thursday, 26 February 2004 at 2:30 pm respectively.

(Post-meeting note: To allow sufficient time for the Administration to finalize its proposal on the Bill and follow up the issues raised, the Chairman decided that the next meeting on Wednesday, 11 February 2004 would not be held and members were notified on the decision vide LC Paper No. CB(1)893/03-04 on 2 February 2004.)

Council Business Division 1
Legislative Council Secretariat
24 February 2004

**Proceedings of the meeting of the
Bills Committee on Copyright (Amendment) Bill 2001
and Copyright (Amendment) Bill 2003
on Wednesday, 28 January 2004 at 2:30 pm
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000048 – 000318	Chairman	<p>Confirmation of minutes</p> <p>Ms Cyd HO's withdrawal from the Bills Committee</p> <p>Discussion on the updated Administration's response to views/concerns of deputations, members and the Assistant Legal Adviser (as at 26.1.2004) (LC Paper No. CB(1)191/03-04(01))</p>	
000319 – 001414	<p>Administration Chairman Mr MA Fung-kwok Dr YEUNG Sum</p>	<p><u>Criminal liability for business end-users under proposed section 118A</u> (Issue 1)</p> <p>Divided views from copyright owners and users on the scope of end-users criminal liability for the use of pirated copies of copyright works in business proposed under the Bill which was confined to four categories of works, namely, computer programs, movies, television dramas and musical recordings.</p> <p>The Administration considered not appropriate at the present stage to consider expanding the scope of criminal liability for the use of pirated copies of copyright works in business to cover other categories of copyright works, such as printed works.</p> <p>Two options to deal with the Bill as stated in paragraph 5 of the minutes for members' consideration</p> <p>The Chairman and Mr MA Fung-kwok expressed support for Option B.</p>	Admin to follow up as per para. 7 of the minutes
001415 – 001814	Mr HUI Cheung-ching Administration	Differences in provisions on "fair use" provided under the relevant laws in the United States and Hong Kong	Admin to follow up as per para. 8 of

Time marker	Speaker	Subject(s)	Action required
			the minutes
001815 – 002045	Administration	<p><u>Offence for possession of infringing copies by a copying service business under proposed section 118C (Issue 3)</u></p> <p>Representatives of the publishing industry and the copying service business consulted raised no objection to the Administration's revised proposal.</p>	
002046 – 002757	ALA2 Mr YEUNG Yiu-chung Dr YEUNG Sum Administration	<p>Clarification on the offence contemplated in proposed section 118C(2)</p> <p>Criminal liability of a copying service business for making copies of a copyright work including "a reprographic copy of a copyright work as published in a book, magazine or periodical" provided by a student</p> <p>Definition of infringing copy and permitted acts under the Copyright Ordinance (Cap.528)</p>	
002758 – 002857	Chairman Miss Margaret NG Ms Audrey EU Administration	Exclusion of reward of a nominal value under proposed sections 118 and 118C	
002858 - 003847	ALA2 Administration	Defences under proposed sections 118C(3) and (4) for offence in relation to possession of infringing copies by a copying service business	
003848 - 003959	Chairman Administration	Liability for provision of self-service copying facilities	
004000 - 004355	Administration Chairman	<p>Expression of "for the purpose of or in the course of any trade or business" under proposed section 118 (Issues 5.7)</p> <p>Administration's response to submission from Hong Kong Video Development Foundation (LC Paper No. CB(1)467/03-04(01))</p>	
004356 - 005036	Administration Mr MA Fung-kwok	Proposed removal of end-user criminal and civil liability for business end use in relation to parallel imports under clauses 2, 3 and 4 of the Bill (Issue 8.1)	

Time marker	Speaker	Subject(s)	Action required
		Administration's response to submissions from the International Federation of the Phonographic Industry (LC Paper Nos. CB(1)897/03-04(01) to (03) and 923/03-04(01)) and HKVDF	Admin to follow up as per para. 15 of the minutes
005037 - 005101	Mr MA Fung-kwok Administration	Adequacy of protection against copyright infringement of digital works placed on the Internet.	Admin to follow up as per para. 16 of the minutes
005102 - 005110	Administration	Clarification that the defence under proposed section 118A(3) was only available to a natural person (Issue 9.1)	
005111 - 005741	Chairman	Date of next meeting	

Council Business Division 1
Legislative Council Secretariat
24 February 2004